

DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLES 35 to 41

Railroads and Other Carriers
Trade Practices
Weights, Measures, and Markets
Educational Institutions
Libraries and Cultural Institutions
Liens
Personal Property



40th ANNIVERSARY
of
HOME RULE



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DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 18

Title 35

Railroads and Other Carriers

to

Title 41

Personal Property



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Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 18 replaces any existing Volume 18 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

We actively solicit your comments and suggestions. If you have questions or comments about the statutes, or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; fax us toll free at 1-800-643-1280; E-mail us at customersupport@bender.com; or visit our website at <http://www.lexisnexis.com>. By providing us with your informed comments, you will be assured of having a working tool which increases in value each year.

LEXISNEXIS

June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

____ /s/ _____

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Chairman

Council of the District of Columbia

____ /s/ _____

Charlotte Brookins-Hudson

General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.

TITLES OF THE DISTRICT OF COLUMBIA OFFICIAL CODE, 2001 EDITION

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1. Government Organization.
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3. District of Columbia Boards and Commissions.
4. Public Care Systems.
5. Police, Firefighters, Medical Examiner, and Forensic Sciences.
6. Housing and Building Restrictions and Regulations.
7. Human Health Care and Safety.
8. Environmental and Animal Control and Protection.
9. Transportation Systems.
10. Parks, Public Buildings, Grounds and Space.

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- *12. Right to Remedy.
- *13. Procedure Generally.
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- *15. Judgments and Executions; Fees and Costs.
- *16. Particular Actions, Proceedings and Matters.
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- *19. Descent, Distribution, and Trusts.
- *20. Probate and Administration of Decedents' Estates.
- *21. Fiduciary Relations and Persons with Mental Illness.

DIVISION IV. CRIMINAL LAW AND PROCEDURE AND PRISONERS

22. Criminal Offenses and Penalties.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

*Title has been enacted as law.

Title

DIVISION V. LOCAL BUSINESS AFFAIRS

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- 26. Banks and Other Financial Institutions.
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- *28. Commercial Instruments and Transactions.
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- 31. Insurance and Securities.
- 32. Labor.
- 33. Partnerships [Repealed].
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- 48. Foods and Drugs.
- 49. Military.
- 50. Motor and Non-Motor Vehicles and Traffic.
- 51. Social Security.

*Title has been enacted as law.

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2. Street Railways and Bus Lines.
3. Employers' Liability.

SUBTITLE II. REPEALED PROVISIONS.

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SUBTITLE I. GENERAL.

CHAPTER 1. RAILROADS.

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- 35-121. Abandonment of railroad substation authorized.
- 35-122. Waiting room on platform authorized.
- 35-123. Reversion of property to District of Columbia; adequate walkways provided.
- 35-124. Right to alter, amend, or repeal reserved.

Subchapter I. Disposition of Property.

§ 35-101. Disposition of property — Sale of unclaimed freight and baggage.

Whenever any freight, baggage, or other property transported by a common carrier to, or deposited with a common carrier at, any point in the District of Columbia, shall remain unclaimed by the owner or consignee, or the charges thereon shall remain unpaid for the space of 6 months after arrival at the point to which the same shall have been directed or transported, or after deposit as aforesaid, and the owner or person to whom the same is consigned, or by whom the same shall have been deposited, shall, after notice of such arrival, or after notice to take away such property so deposited, neglect or refuse to receive the same and pay the charges thereon within such period of 6 months, then it shall be lawful for such carrier to sell such freight, baggage, or other property at public auction, after giving 3 weeks notice of the time and place of sale, once a week for 3 successive weeks, in a newspaper published in the District of Columbia.

(Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 642.)

Section references. — This section is referred to in §§ 29-201.09, 29-201.11, 29-201.15, 29-201.23, 29-201.29, 29-201.33, 29-201.34, 29-201.36, 29-201.37, 29-201.38, 29-201.38, 29-201.39, 29-1101, 35-102, and 35-103.

Prior Codifications. — 1981 Ed., § 44-101. 1973 Ed., § 44-101.

§ 35-102. Disposition of Property — Where impractical to give notice or delay sale; sale authorized by court order.

Upon the application of such carrier, verified by affidavit, to the Superior Court of the District of Columbia, setting forth that the place of residence of the owner or consignee of any such freight, baggage, or other property is unknown, or that such freight, baggage, or other property is of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice or delay the sale for the period provided in § 35-101, then it shall be lawful for such Court to make an order authorizing the sale of such freight, baggage, or other property upon such terms as to notice as the nature of the case may admit of and to such Court shall seem meet.

(Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 643; June 30, 1902, 32 Stat. 534, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 575, Pub. L. 91-358, title I, § 157(j).)

Section references. — This section is referred to in §§ 29-201.09, 29-201.11, 29-201.15, 29-201.23, 29-201.29, 29-201.33, 29-201.34, 29-201.36, 29-201.37, 29-201.38 to 29-201.39, 29-1101 and 35-102.

Prior Codifications. — 1981 Ed., § 44-102. 1973 Ed., § 44-102.

§ 35-103. Disposition of proceeds of sale.

The residue of moneys arising from any such sale, under either § 35-101 or § 35-102, after deducting the amount of charges, including charges for transportation, the cost of handling and storage, demurrage, and the costs and expenses of proceedings to authorize the sale, and of advertising and sale, shall be paid to the owner of such freight, baggage, or other property on demand.

(Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 644.)

Section references. — This section is referred to in §§ 29-201.09, 29-201.11, 29-201.15, 29-201.23, 29-201.29, 29-201.33, 29-201.34, 29-201.36, 29-201.37, and 29-201.38 to 29-201.39.

Prior Codifications. — 1981 Ed., § 44-103. 1973 Ed., § 44-103.

Subchapter II. 7th Street Substation.

§ 35-121. Abandonment of railroad substation authorized.

Upon the completion by it of the substitute facilities authorized by § 35-122 hereof, the Philadelphia, Baltimore and Washington Railroad Company is

authorized, without any further or other authority, to abandon and remove the 7th Street substation built and maintained by it pursuant to the requirements of Act of February 3, 1909 (35 Stat. 593, ch. 63), and to abandon the ticket agency and baggage accommodations maintained by it pursuant to the requirements of said Act.

(July 25, 1935, 49 Stat. 497, ch. 415, § 1.)

Section references. — This section is referred to in § 35-124.

Prior Codifications. — 1981 Ed., § 44-104.
1973 Ed., § 44-104.

§ 35-122. Waiting room on platform authorized.

In lieu of the said substation and facilities maintained at the intersection of 7th Street and C Street Southwest, in the City of Washington, the Philadelphia, Baltimore and Washington Railroad Company is authorized to construct and maintain on the train platform an enclosed waiting room for passengers, with convenient means of ingress and egress leading from and to the street level below.

(July 25, 1935, 49 Stat. 498, ch. 415, § 2.)

Section references. — This section is referred to in §§ 35-121 and 35-124.

Prior Codifications. — 1981 Ed., § 44-105.
1973 Ed., § 44-105.

§ 35-123. Reversion of property to District of Columbia; adequate walkways provided.

The area in square south of 463 on the map of the City of Washington heretofore used for station purposes shall revert to the District of Columbia upon the completion of these improvements; provided, that the said Philadelphia, Baltimore and Washington Railroad Company shall construct and maintain thereon, subject to the approval of the Mayor of the District of Columbia, adequate walkways to the adjacent streets.

(July 25, 1935, 49 Stat. 498, ch. 415, § 3.)

Section references. — This section is referred to in § 35-124.

Prior Codifications. — 1981 Ed., § 44-106.
1973 Ed., § 44-106.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 35-124. Right to alter, amend, or repeal reserved.

Congress reserves the right to alter, amend, or repeal §§ 35-121 to 35-123. (July 25, 1935, 49 Stat. 498, ch. 415, § 4.)

Prior Codifications. — 1981 Ed., § 44-107. 1973 Ed., § 44-107.

CHAPTER 2. STREET RAILWAYS AND BUS LINES.

Subchapter I. General

- Sec.
 35-201. Competitive lines on fixed routes and schedules; certificate of convenience and necessity required.
 35-202. Furnishing sufficient cars, power, equipment, appliances and service required; rules and regulations; penalties for violation.
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- 35-261. Notice of enhanced penalties for commission of offenses against transit operators and Metrorail station managers.

Subchapter IV. Merger of Street Railways

- 35-271. Merger of street railways permitted.

Subchapter I. General.

§ 35-201. Competitive lines on fixed routes and schedules; certificate of convenience and necessity required.

No competitive street railway or bus line, that is, bus or railway line for the transportation of passengers of the character which runs over a given route on a fixed schedule, shall be established without the prior issuance of a certificate by the Public Service Commission of the District of Columbia to the effect that the competitive line is necessary for the convenience of the public.

(Jan. 14, 1933, 47 Stat. 760, ch. 10, § 4; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21.)

Prior Codifications. — 1981 Ed., § 44-201. 1973 Ed., § 44-201.

CASE NOTES

In general.

Provision of District of Columbia Code prohibiting establishment of bus line, competitive

with named transit company, over a given route on a fixed schedule, unless Public Utilities Commission has issued certificate to competing

carrier that its line is necessary for convenience of public, gives transit company a status which is legally protectable. D.C. Code 1951, § 44-201. *Capital Transit Co. v. Safeway Trails*, 201 F.2d 708, 1953 U.S. App. LEXIS 4022 (C.A.D.C. 1953).

There was no such absence of substantial evidence in support of Public Utilities Commission's finding that bus service extension was necessary for convenience of public as would overcome conclusiveness thereof. D.C. Code 1940, § 44-201. *Washington, Marlboro & Annapolis Motor Lines v. Public Utilities Commission of District of Columbia*, 114 F.Supp. 328, 1952 U.S. Dist. LEXIS 4612 (D.D.C.1952).

Statutory provision that no competitive street railway or bus line for transportation of passengers of character which runs over a given route on a fixed schedule shall be established without prior issuance of certificate by Public Utilities Commission of District of Columbia to effect that competitive line is necessary for convenience of public covers all kinds of operations of a competitive bus line, regardless of whether they are intrastate or interstate, and such provision is not limited to interstate operations. D.C. Code 1951, § 44-201. *Oriole Motor Coach Co. v. Public Utilities Commission*, 111 F.Supp. 621, 1953 U.S. Dist. LEXIS 2146 (D.D.C.1953).

§ 35-202. Furnishing sufficient cars, power, equipment, appliances and service required; rules and regulations; penalties for violation.

Every street railroad company or corporation owning, controlling, leasing or operating 1 or more street railroads within the District of Columbia shall on each and all of its railroads supply and operate a sufficient number of cars, clean, sanitary, in good repair, with proper and safe power, equipment, appliances and service, comfortable and convenient, and so operate the same as to give expeditious passage, not to exceed 15 miles per hour within the city limits or 20 miles per hour in the suburbs, to all persons desirous of the use of the said cars, without crowding said cars. The Public Service Commission is hereby given power to require and compel obedience to all of the provisions of this section, and to make, alter, amend and enforce all needful rules and regulations to secure said obedience; and said Commission is given power to make all such orders and regulations necessary to the exercise of the powers herein granted to it as may be reasonable and proper; and such railroad companies or corporations, their officers and employees, are hereby required to obey all the provisions of this section, and such regulations and orders as may be made by said Commission. Any such company or corporation, or its officers or employees, violating any provision of this section, or any of the said orders or regulations made by said Commission, or permitting such violation, shall be punished by a fine of not more than \$1,000. And each day of failure or neglect on the part of such company or corporation, its officers or employees, to obey each and all of the provisions and requirements of this section, or the orders and regulations of the Commission made thereunder, shall be regarded as a separate offense.

(May 23, 1908, 35 Stat. 250, ch. 190, § 16; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21.)

Section references. — This section is referred to in § 35-203.

Prior Codifications. — 1981 Ed., § 44-202. 1973 Ed., § 44-202.

CASE NOTES

In general.

A prosecution in the police court of this District should be conducted by the corporation counsel in the name of the District of Columbia, and not by the United States attorney for the District of Columbia, when it is against a street railway company for violation of Act Cong. May 23, 1908, c. 190, 35 Stat. 246, providing that street railway companies shall supply and operate a sufficient number of cars and give expeditious passage to the public, conferring upon the Interstate Commerce Commission au-

thority to compel obedience to the statute, and to make needful regulations to secure such obedience, and requiring prosecutions for the violation of the statute to be made on information of the Commission; Code of Law 1901, § 932, 31 Stat. 1340, requiring prosecutions for violations of penal statutes where the maximum punishment is a fine to be conducted in the name of the District of Columbia and by the corporation counsel. *U.S. v. Capital Traction Co.*, 38 App.D.C. 469, 1912 U.S. App. LEXIS 2149 (1912).

§ 35-203. Prosecutions to be on information.

Prosecutions for violations of any of the provisions of §§ 35-202, 35-206, and 35-207 shall be on information of the Corporation Counsel filed in the Superior Court of the District of Columbia by or on behalf of the District of Columbia.

(May 23, 1908, 35 Stat. 250, ch. 190, § 17; Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 21, 2000, D.C. Law 13-187, § 2(b), 47 DCR 7073.)

Prior Codifications. — 1981 Ed., § 44-203. 1973 Ed., § 44-203.

Effect of amendments. — D.C. Law 13-187 substituted for "Public Service Commission" the phrase "Corporation Counsel" and for the phrase "the Commission" the phrase "the District of Columbia".

Legislative history of Law 13-187. — Law 13-187, the "Metrobus Ticket Transfer Amendment Act of 2000," was introduced in Council

and assigned Bill No. 13-605, which was referred to the Committee on Local and Regional Affairs. The Bill was adopted on first and second readings on June 26, 2000, and July 11, 2000, respectively. Signed by the Mayor on August 2, 2000, it was assigned Act No. 13-403 and transmitted to both Houses of Congress for its review. D.C. Law 13-187 became effective on October 21, 2000.

CASE NOTES

In general.

A prosecution in the police court of this District should be conducted by the corporation counsel in the name of the District of Columbia, and not by the United States attorney for the District of Columbia, when it is against a street railway company for violation of Act Cong. May 23, 1908, c. 190, 35 Stat. 246, providing that street railway companies shall supply and operate a sufficient number of cars and give expeditious passage to the public, conferring upon the Interstate Commerce Commission au-

thority to compel obedience to the statute, and to make needful regulations to secure such obedience, and requiring prosecutions for the violation of the statute to be made on information of the Commission; Code of Law 1901, § 932, 31 Stat. 1340, requiring prosecutions for violations of penal statutes where the maximum punishment is a fine to be conducted in the name of the District of Columbia and by the corporation counsel. *U.S. v. Capital Traction Co.*, 38 App.D.C. 469, 1912 U.S. App. LEXIS 2149 (1912).

§ 35-204. Fenders required on street cars.

The Mayor of the District of Columbia is hereby authorized and empowered to make and to enforce all reasonable regulations in respect to requiring street cars operated by other means than horsepower in the District of Columbia to

be provided with proper fenders for the protection of the lives and limbs of all persons within the District of Columbia. Such power and authority shall extend to the adoption by the said Mayor of any fender or fenders deemed by him to be superior to the fenders now in use as the fender or fenders which shall be used on cars operated within said District; provided, that nothing contained in this section shall operate to relieve any street-railway company from liability for accidents on its lines.

(Aug. 7, 1894, 28 Stat. 250, ch. 232.)

Prior Codifications. — 1981 Ed., § 44-204. 1973 Ed., § 44-204.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 35-205. Glass vestibules required for street car motor-men; penalties; exception. [Repealed].

Repealed.

(Mar. 3, 1905, 33 Stat. 1001, ch. 1434; Apr. 29, 2004, D.C. Law 15-154, § 10, 50 DCR 10996.)

Prior Codifications. — 1981 Ed., § 44-205. 1973 Ed., § 44-205.

Legislative history of Law 15-154. — Law 15-154, the “Elimination of Outdated Crimes Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-79, which was referred to Committee on the Judiciary. The

Bill was adopted on first and second readings on October 7, 2003, and November 4, 2003, respectively. Signed by the Mayor on November 25, 2003, it was assigned Act No. 15-255 and transmitted to both Houses of Congress for its review. D.C. Law 15-154 became effective on April 29, 2004.

CASE NOTES

ANALYSIS

In general.
Validity.

In general.

Car remodeled in 1905 held not compliance with statutory requirements respecting vestibule for motorman. *Washington Ry. & Elec. Co. v. District of Columbia*, 10 F.2d 999, 1926 U.S. App. LEXIS 2322 (1926).

Statute relating to motorman’s vestibule held not impliedly repealed. *Washington Ry. & Elec. Co. v. District of Columbia*, 10 F.2d 999, 1926 U.S. App. LEXIS 2322 (1926).

Validity.

Statute relating to motorman’s vestibule held not void for indefiniteness and uncertainty. *Washington Ry. & Elec. Co. v. District of Columbia*, 10 F.2d 999, 1926 U.S. App. LEXIS 2322 (1926).

§ 35-206. Construction of duct lines authorized.

The Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Railway Company, and

the Capital Traction Company are hereby permitted to lay duct lines on such streets as may be necessary for the proper operation of their lines, the location of such duct lines to be approved by the Mayor of the District of Columbia, and the cost thereof shall be borne and paid solely by said street-railway companies, and they shall be solely liable for all damages to persons and property occasioned by any construction or work authorized by this section.

(May 23, 1908, 35 Stat. 247, ch. 190, § 4.)

Section references. — This section is referred to in § 35-203.

Prior Codifications. — 1981 Ed., § 44-206. 1973 Ed., § 44-206.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 35-207. Unlawful disposition, acceptance and use of transfers.

No transfer ticket or written or printed instrument giving or purporting to give the right of transfer to any person or persons from a rail transit car or from a public passenger vehicle with a capacity for seating 12 or more, owed or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers in regular route service within the corporate limits of the city, shall be issued, sold, or given except to a passenger lawfully entitled thereto. Any person who shall issue, sell, or give away such a transfer ticket or instrument as aforesaid to a person or persons not lawfully entitled thereto, and any person or persons not lawfully entitled thereto who shall receive and use or offer for passage any such transfer ticket or instrument to another with intent to have such transfer ticket used or offered for passage shall be punished by a fine not exceeding \$25.

(May 23, 1908, 35 Stat. 250, ch. 190, § 15; Oct. 21, 2000, D.C. Law 13-187, § 2(a), 47 DCR 7073.)

Section references. — This section is referred to in § 35-203.

Prior Codifications. — 1981 Ed., § 44-207. 1973 Ed., § 44-207.

Effect of amendments. — D.C. Law 13-187 rewrote the first sentence which formerly provided: "No transfer ticket or written or printed instrument giving or purporting to give the

right of transfer to any person or persons from a public conveyance operated upon 1 line or route of a street railroad or from 1 car to another car upon the line of any street railroad, shall be issued, sold, or given except to a passenger lawfully entitled thereto."

Legislative history of Law 13-187. — For Law 13-187, see notes following § 35-203.

CASE NOTES

In general.

A prosecution in the police court of this District should be conducted by the corporation counsel in the name of the District of Columbia, and not by the United States attorney for the District of Columbia, when it is against a street railway company for violation of Act Cong. May 23, 1908, c. 190, 35 Stat. 246, providing that street railway companies shall supply and operate a sufficient number of cars and give expeditious passage to the public, conferring upon the Interstate Commerce Commission au-

thority to compel obedience to the statute, and to make needful regulations to secure such obedience, and requiring prosecutions for the violation of the statute to be made on information of the Commission; Code of Law 1901, § 932, 31 Stat. 1340, requiring prosecutions for violations of penal statutes where the maximum punishment is a fine to be conducted in the name of the District of Columbia and by the corporation counsel. *U.S. v. Capital Traction Co.*, 38 App.D.C. 469, 1912 U.S. App. LEXIS 2149 (1912).

§ 35-208. Reciprocal transfer and trackage agreements.

Every street railway in the District of Columbia whose lines connect, or whose lines may, after August 2, 1894, connect, with the lines of any other street-railway company, is hereby required to make reciprocal transfer arrangements with such street-railway companies, and to furnish such facilities therefor as the public convenience may require, and to enter into reciprocal trackage arrangements with such connecting roads. The schedules and compensation shall be mutually agreed upon between the said railway companies, and in case of failure to reach such mutual agreement, the matter in dispute shall be determined by the Superior Court of the District of Columbia, upon petition filed by either party.

(Aug. 2, 1894, 28 Stat. 218, ch. 189, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(40).)

Prior Codifications. — 1981 Ed., § 44-208. 1973 Ed., § 44-208.

§ 35-209. Type of rails required.

No other rail than a flat grooved rail made level with the surface of the streets upon each side of the tracks or roadbeds, so that no obstruction shall be presented to vehicles passing over said tracks, shall be laid by any street railway company in the streets of Washington; provided, that the foregoing requirements as to rails and roadbed shall not apply to street railroads outside the City of Washington.

(Mar. 2, 1889, 25 Stat. 797, ch. 370; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

Prior Codifications. — 1981 Ed., § 44-209. 1973 Ed., § 44-209.

§ 35-210. Use of another's underground line prohibited.

It shall be unlawful for any street-railway company operating its system or parts of its system over any portion of the underground electric lines owned and operated by another street-railway company in the City of Washington to continue such operation, or to enter into reciprocal trackage relations with any

other company, unless its motive power for the propulsion of its cars shall be the same as that of the company whose tracks are used or to be used. For every violation of §§ 35-210 to 35-212 the company violating it shall be subject to a fine of \$10 for every car operated in violation of the provisions of §§ 35-210 to 35-212, said fine to be collected and applied in the same manner as is provided by § 35-211.

(Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 711.)

Prior Codifications. — 1981 Ed., § 44-210. 1973 Ed., § 44-210.

§ 35-211. Removal of disused tracks; penalty for noncompliance.

Whenever the track or tracks, or any part thereof, of any street-railway company in the District of Columbia shall not have been regularly operated for railway purposes upon a schedule as required by its charter for a period of 3 months, the Mayor of said District, in his discretion, may thereupon notify such company to remove said unused tracks and to place the street in good condition; and if such company shall neglect or refuse to remove said tracks and place the street in good condition within 60 days after such notice, the said company shall be deemed guilty of a misdemeanor and shall be liable to a fine of \$10 for each and every day during which said tracks are permitted to remain upon the street or streets, or said roadway shall remain out of repair, which fine shall be recovered in the Superior Court of the District of Columbia, in the name of said District, as other fines and penalties are recovered in said Court.

(Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 710; June 30, 1902, 32 Stat. 534, ch. 1329; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Section references. — This section is referred to in § 35-210.

Prior Codifications. — 1981 Ed., § 44-211. 1973 Ed., § 44-211.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

The Commissioners of the District of Columbia may require removal of structures or other property unlawfully in a public street. *Capital Transit Co. v. Hazen*, 93 F.2d 250, 1937 U.S. App. LEXIS 2774 (1937).

Abandoned structures in highways are, when ordered removed by competent authority, illegally in such streets or highways, as constituting a "trespass," or a "public nuisance." *Capital Transit Co. v. Hazen*, 93 F.2d 250, 1937 U.S. App. LEXIS 2774 (1937).

§ 35-212. Free transfer under reciprocal trackage agreement.

All street-railway companies within the District of Columbia on January 1, 1902, operating their systems, or parts of their systems, in the City of Washington by use of the tracks of 1 or more of such companies, under a reciprocal trackage agreement, which shall be compelled to discontinue the use of the tracks of another company, shall issue free transfers to their patrons from 1 system to the other at such junctions of their respective lines as may be provided for by the Mayor of the District of Columbia.

(Mar. 3, 1901, 31 Stat. 1302, ch. 854, § 712.)

Section references. — This section is referred to in § 35-210.

Prior Codifications. — 1981 Ed., § 44-212. 1973 Ed., § 44-212.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 35-213. Free transportation of uniformed policemen and firemen. [Repealed].

Repealed.

(Sept. 1, 1916, 39 Stat. 683, ch. 433; May 10, 1989, D.C. Law 7-231, § 46, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 44-213. 1973 Ed., § 44-213.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on

first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 35-214. Reduced fares for school children.

Expired.

(Feb. 25, 1931, 46 Stat. 1419, ch. 302.)

Prior Codifications. — 1981 Ed., § 44-214.

Editor's notes. — The Act of February 25, 1931, 46 Stat. 1419, ch. 302, formerly codified as this section, became inoperative upon acceptance of the agreement between the Capital

Traction Company and the Washington Railway and Electric Company for unification under the Act of January 14, 1933, 47 Stat. 759, ch. 10.

§ 35-215. Annual reports to Congress.

Every street-railroad corporation in the District of Columbia, and every such corporation which shall be organized after June 10, 1896, shall, on or before the 1st day of February in each year, make a report to each the Senate and the House of Representatives, which report shall be sworn to and signed by the president and treasurer of such corporation, and shall cover the period of 1 year ending the 31st day of December previous to the date of making the report. Such report shall state the amount of capital stock, with a list of the stockholders and the amount of stock held by each; the amount of capital stock paid in; the total amount now of funded debt; the amount of floating debt; the average rate per annum of interest on funded debt; amount of dividends declared; cost of roadbed and superstructure, including iron; cost of land, buildings, and fixtures, including land damages; cost of cars, horses, harness, and motors and other machinery; total cost of road and equipment; length of road in miles; length of double track, including sidings; weight of rail, by yard; the number of cars and of horses; the number of motors; the total number of passengers carried in cars; the average time consumed by passenger cars in passing over the road; repairs of roadbed and railway, including iron, and repairs of buildings and fixtures; total cost of maintaining road and real estate; cost of general superintendence; salaries of officers, clerks, agents, and office expenses; wages paid conductors, drivers, engineers, and motor men; water and other taxes; damages to persons and property, including medical attendance; rents, including use of other roads; total expense of operating road, and repairs; receipts from passengers; receipts from all other sources, specifying what, in detail; total receipts from all sources during the year; payments for maintenance and repairs; payments for interest; payments for dividends on stock, amount and rate per centum; total payments during the year; the number of persons injured in life and limb; the cause of the injury, and whether to passengers, employees, or other persons.

(June 10, 1896, 29 Stat. 320, ch. 395, § 10.)

Prior Codifications. — 1981 Ed., § 44-222. 1973 Ed., § 44-215.

CASE NOTES

In general.

Amount received by street railroad under agreement with real estate firm for reimbursement for deficit in extending bus service held taxable as gross receipts (Act July 29, 1892, § 7 [27 Stat. 333]; Act June 10, 1896, § 10 [D.C.

Code 1929, T. 26, § 169]; Act July 1, 1902, § 6, par. 5, as amended by Act April 28, 1904, § 2 [D.C. Code 1929, T. 20, § 760]). *Potomac Elec. Power Co. v. Rudolph*, 29 F.2d 634, 1928 U.S. App. LEXIS 2762 (1928).

§ 35-216. Failure to pay established fare or to present valid transfer; entry by rear exit door prohibited.

No person shall either knowingly board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metro-

politan Area Transit Authority, which is transporting passengers within the corporate limits of the District of Columbia; or knowingly board a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or knowingly enter or leave the paid area of a real transit station owned and/or operated by the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia without paying the established fare or presenting a valid transfer for transportation on such public passenger vehicle or rail transit car. No person shall board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, through the rear exit door, unless so directed by an employee or agent of the carrier.

(Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344.)

Section references. — This section is referred to in §§ 7-1701, 35-252 and 35-2530.

Prior Codifications. — 1981 Ed., § 44-224. 1973 Ed., § 44-216.1.

Legislative history of Law 2-40. — For legislative history of D.C. Law 2-40, see Historical and Statutory Notes following § 35-251.

CASE NOTES

In general.

Officer of the Washington Metropolitan Area Transit Authority transit police had probable cause to arrest passenger for failing to pay fare, and thus was immune from suit for alleged false arrest; passenger was observed exiting subway station before gates had closed on previous passenger, in spite of fact that passenger's own farecard was rejected by machine. Washington Metropolitan Area Transit Regulation Compact, § 1 et seq., 90 Stat. 672. *Dant v. District of Columbia*, 829 F.2d 69, 1987 U.S. App. LEXIS 12180 (C.A.D.C. 1987).

The Washington Metropolitan Area Transit Authority, which was created by Congress by approving an interstate compact between Virginia, Maryland, and the District of Columbia, enjoyed sovereign immunity from suit pertaining to its police functions in allegedly erroneously arresting passenger for failing to pay fare. Washington Metropolitan Area Transit Regulation Compact, § 1 et seq., 90 Stat. 672. *Dant v. District of Columbia*, 829 F.2d 69, 1987 U.S. App. LEXIS 12180 (C.A.D.C. 1987).

Common-law claims of Washington Metropolitan Area Transit Authority passenger, against District of Columbia, for alleged malicious prosecution and abuse of process follow-

ing his arrest for failing to pay fare was barred under local law by absolute prosecutorial immunity. *Dant v. District of Columbia*, 829 F.2d 69, 1987 U.S. App. LEXIS 12180 (C.A.D.C. 1987).

The Washington Metropolitan Area Transit Authority, which was created by Congress by approving an interstate compact between Virginia, Maryland, and the District of Columbia, did not enjoy sovereign immunity with respect to suit for alleged negligence in operation and maintenance of its farecard system brought by passenger who claimed that he was erroneously arrested for failing to pay fare. Washington Metropolitan Area Transit Regulation Compact, § 1 et seq., 90 Stat. 672. *Dant v. District of Columbia*, 829 F.2d 69, 1987 U.S. App. LEXIS 12180 (C.A.D.C. 1987).

Existence of probable cause for arrest of individual who entered paid area of transit station without paying fare entitled arresting officers to immunity from arrestee's subsequent civil claim for false arrest; officers reasonably could have inferred arrestee's intent from his undisputed entry into paid area of transit station without paying required fare. D.C. Code 1981, § 44-224. *Tillman v. Washington Metro. Area Transp. Auth.*, 695 A.2d 94, 1997 D.C. App. LEXIS 122 (1997).

*Subchapter II. Student Fares.***§ 35-231. Fixed rate for schoolchildren not over 18 years of age; formula for adjusting and payment of fare subsidy. [Repealed].**

Repealed.

(Aug. 9, 1955, 69 Stat. 616, ch. 680, § 1; June 28, 1962, 76 Stat. 113, Pub. L. 87-507, § 1(2); Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Oct. 18, 1968, 82 Stat. 1187, Pub. L. 90-605, § 1; Aug. 11, 1971, 85 Stat. 315, Pub. L. 92-90; Aug. 14, 1974, 88 Stat. 446, Pub. L. 93-375, § 1; Mar. 3, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Prior Codifications. — 1981 Ed., § 44-215.
1973 Ed., § 44-214a.

legislative history of D.C. Law 2-152, see Historical and Statutory Notes following § 35-232.

Legislative history of Law 2-152. — For

§ 35-232. Subsidy agreement.

The Mayor of the District of Columbia is authorized to enter into an agreement with the Washington Metropolitan Area Transit Authority for the transportation, at reduced fares, of students going to and from public, parochial, and private schools and to and from related educational activities in the District of Columbia.

(Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Section references. — This section is referred to in §§ 35-237, 38-252, 38-1702.11, and 38-1802.08.

Prior Codifications. — 1981 Ed., § 44-216.
1973 Ed., § 44-214.1.

Legislative history of Law 2-152. — Law 2-152 was introduced in Council and assigned Bill No. 2-293, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 11, 1978 and July 25, 1978, respectively. Signed by the Mayor on

August 21, 1978, it was assigned Act No. 2-270 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 2-152, the School Transit Subsidy Act of 1978, see Mayor's Order 90-130, October 2, 1990.

Delegation of Authority to the Director of the District Department of Transportation, see Mayor's Order 2006-104, July 28, 2006 (53 DCR 6399).

§ 35-233. Validity of reduced fares; requirements for eligibility.

(a)(1) The fare to be paid by students on regular school days for regular route transportation during peak and off-peak hours on the Metrobus Transit System within the District of Columbia shall be ½ of the base boarding peak bus fare charged to passengers other than students and senior citizens.

(2) The fare to be paid by students on regular school days for regular route transportation during peak and off-peak hours on the Metrorail Transit System within the District of Columbia shall be ½ of the base boarding peak rail fare charged to passengers other than students and senior citizens for Metrorail travel within the District of Columbia.

(3) In a case where the reduced student fare as determined in paragraph (1) or (2) of this subsection results in an amount which is not a multiple of \$.05, such fare shall be rounded downward to the nearest amount which is a multiple of \$.05.

(4) Transfers for students between buses and between rail and bus shall be made in the same manner as are transfers of other passengers, but without any additional charge for the transfer.

(b)(1) This reduced student fare shall be valid only for transportation of students going to and from public, parochial, and private schools, and to and from related educational activities in the District of Columbia on school days.

(2) Student travel on Metrobus and Metrorail during Saturdays, Sundays, holidays, and vacations shall be charged at the regular rate charged to passengers other than students and senior citizens, except for travel to and from a recognized school-related educational activity in the District of Columbia. The Mayor shall issue rules and regulations to enforce this section.

(c) Reduced fares for students on the Metrobus and Metrorail Transit Systems shall be available only to persons who are:

(1) Under 19 years of age, except that reduced fares shall be available for children with disabilities, as defined by the Individuals with Disabilities Education Act, approved April 13, 1970 (P.L. 91-230; 84 Stat. 175; 20 U.S.C. § 1401), through the end of the semester in which children with disabilities reach 22 years of age;

(2) Residents of the District of Columbia; and

(3) Currently enrolled in a regular course of instruction at an elementary or secondary public, parochial, or private school located in the District of Columbia.

(d) Reduced fares for students on the Metrorail Transit System shall be available only to persons who possess a valid student Metrorail discount card.

(e) Notwithstanding subsections (a) and (b) of this section, the fare to be paid by students on regular school days for regular route transportation during peak and off-peak hours on the Metrobus Transit System and on the Metrorail Transit System shall be \$.15 from September 26, 1981, until December 31, 1981.

(Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534; Sept. 26, 1981, D.C. Law 4-33, § 2(a), (b), 28 DCR 3187; Sept. 26, 1995, D.C. Law 11-52, § 815, 42 DCR 3684; Oct. 7, 1998, D.C. Law 12-156, § 2, 45 DCR 4617.)

Section references. — This section is referred to in §§ 35-234, 35-235, 35-236, and 35-237.

Prior Codifications. — 1981 Ed., § 44-217. 1973 Ed., § 44-214.2.

Legislative history of Law 2-152. — For legislative history of D.C. Law 2-152, see Historical and Statutory Notes following § 35-232.

Legislative history of Law 4-33. — Law 4-33 was introduced in Council and assigned Bill No. 4-3, which was referred to the Committee on Education and the Committee on Transportation and Environmental Affairs. The Bill

was adopted on first and second readings on June 2, 1981, and June 16, 1982, respectively. Signed by the Mayor on July 8, 1981, it was assigned Act No. 4-57 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No.

11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 12-156. — Law 12-156, the “School Transit Subsidy Act of 1978 Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-190, which was referred to the Committee on Public Works

and the Environment. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 17, 1998, it was assigned Act No. 12-383 and transmitted to both Houses of Congress for its review. D.C. Law 12-156 became effective on October 7, 1998.

§ 35-234. Tokens and tickets; certification of eligibility required.

(a) Student fare tokens and tickets shall be issued by the Mayor of the District of Columbia only to students who present a certification of eligibility to use the Metrobus Transit System issued by an authorized school official.

(b) Certifications of eligibility shall be issued only to those students who meet the eligibility requirements imposed by subsection (c) of § 35-233 and shall contain such additional information as the Mayor may require. The Mayor is authorized to verify information contained in certifications of eligibility.

(Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534; Sept. 26, 1981, D.C. Law 4-33, § 2(c), 28 DCR 3187.)

Prior Codifications. — 1981 Ed., § 44-218.
1973 Ed., § 44-214.3.

legislative history of D.C. Law 2-152, see Historical and Statutory Notes following § 35-232.

Legislative history of Law 2-152. — For

§ 35-235. Metrorail discount cards; factors determining need in use of transit system.

(a) Student Metrorail discount cards shall be issued by the Mayor of the District of Columbia only to those students who:

(1) Present a certification of eligibility to use the Metrorail Transit System issued by an authorized school official; and

(2) Have a need to use the Metrorail Transit System as determined by the Mayor.

(b) Certifications of eligibility shall be issued only to those students who meet the eligibility requirements imposed by subsection (c) of § 35-233 and shall contain such additional information as the Mayor may require. The Mayor is authorized to verify information contained in certifications of eligibility.

(c) In determining need pursuant to subsection (a)(2) of this section, the Mayor shall consider appropriate indices of the student's need to use the Metrorail Transit System for transportation to and from school and related educational activities in the District of Columbia, including the proximity of the student's residence to his school, the proximity of the student's residence and school to Metrorail stations and the student's participation in city-wide education programs, work-study programs, inter-school extracurricular activities and other similar education and extracurricular activity programs.

(d) Student Metrorail discount cards shall:

(1) Bear the name of the student, an expiration date and such other information as the Mayor may require;

(2) Be displayed by the student when purchasing Metrorail student farecards;

(3) Be signed by the student immediately upon receipt; and

(4) Be nontransferable.

(e) Metrorail student farecards shall:

(1) Be signed by the student immediately upon purchase; and

(2) Be nontransferable.

(f) No person, other than the person for whose use such farecard is issued, shall use a student Metrorail farecard to ride on a Metrorail train and any such other use is hereby prohibited.

(Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534.)

Prior Codifications. — 1981 Ed., § 44-219. legislative history of D.C. Law 2-152, see Historical and Statutory Notes following § 35-232.
1973 Ed., § 44-214.4.
Legislative history of Law 2-152. — For

§ 35-236. Subsidy payments authorized; audit; interest credit for advance payment.

(a) The Washington Metropolitan Area Transit Authority shall certify to the Mayor, as soon as practicable, following the end of each calendar month:

(1) The amount that is the difference between the total number of all Metrobus student fare tickets or tokens collected by the Washington Metropolitan Area Transit Authority during such calendar month for the transportation of students on the Metrobus Transit System times the average of the regular single trip Metrobus fare charged within the District of Columbia during the peak and off-peak hours, or such other amount as may hereinafter be agreed to by the Mayor and the Washington Metropolitan Area Transit Authority, pursuant to a student passenger survey or other appropriate method, and the total of all such Metrobus student fare tickets or tokens sold during such calendar month times the reduced student fare as determined in § 35-233.

(2) The amount that is the difference between the total of all fares that would have been paid to the Washington Metropolitan Area Transit Authority during such calendar month by students for transportation on the Metrorail System, if such fares had been paid at the otherwise applicable regular adult Metrorail fare for each trip made by students during that month, and the total of all money collected by the Washington Metropolitan Area Transit Authority during such calendar month in connection with the sale of Metrorail student farecards.

(b) The Mayor, upon receiving any such certification, shall pay the Washington Metropolitan Area Transit Authority, subject to an audit acceptable to the Mayor, the amounts contained therein. The Mayor is authorized to make advance subsidy payments to the Washington Metropolitan Area Transit Authority; provided, that the District of Columbia shall receive an appropriate interest credit from the Washington Metropolitan Area Transit Authority for

each such advance payment; and provided further, that the exercise of such authority shall not affect the certification and audit requirements.

(Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534; Sept. 26, 1981, D.C. Law 4-33, § 2(d), 28 DCR 3187.)

Section references. — This section is referred to in §§ 9-1111.15.

Prior Codifications. — 1981 Ed., § 44-220. 1973 Ed., § 44-214.5.

Legislative history of Law 2-152. — For

legislative history of D.C. Law 2-152, see Historical and Statutory Notes following § 35-232.

Legislative history of Law 4-33. — For legislative history of D.C. Law 4-33, see Historical and Statutory Notes following § 35-233.

§ 35-237. Rules and regulations.

The Mayor shall promulgate rules and regulations necessary to carry out §§ 35-232 to 35-237, including rules and regulations relating to the maximum number of Metrobus student fare tokens and Metrorail student farecards that may be purchased by an eligible student at any 1 time or during a specific period of time, and relating to the use or the prohibition of use of fare tokens, tickets and farecards for the transportation of students going to and from school programs and related activities held in the District of Columbia on weekends and holidays.

(Mar. 6, 1979, D.C. Law 2-152, § 2, 25 DCR 2534; Sept. 26, 1981, D.C. Law 4-33, § 2(e), 28 DCR 3187.)

Prior Codifications. — 1981 Ed., § 44-221. 1973 Ed., § 44-214.6.

Legislative history of Law 2-152. — For legislative history of D.C. Law 2-152, see Historical and Statutory Notes following § 35-232.

Legislative history of Law 4-33. — For legislative history of D.C. Law 4-33, see Historical and Statutory Notes following § 35-233.

Subchapter III. Passenger Conduct.

§ 35-251. Unlawful conduct on public passenger vehicles.

(a) For the purposes of this section, the term “rail transit station” means a regular rail stopping place for the pick-up and discharge of passengers in regular route service, contract service, special or community-type service, including the fare-paid areas and roofed areas of the rail transit stations (not bus terminals or bus stops) owned, operated, or controlled by the Washington Metropolitan Area Transit Authority; provided, that the term “rail transit station” shall not include parking lots, roadways and other areas intended for vehicle traffic.

(b) It is unlawful for any person either while aboard a public passenger vehicle with a capacity for seating 12 or more passengers, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers in regular route service within the corporate limits of the District of Columbia; or while aboard a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or while within a rail transit station owned and/or operated by

the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia to:

- (1) Smoke or carry a lighted or smoldering pipe, cigar, or cigarette;
- (2) Consume food or drink;
- (3) Spit;
- (4) Discard litter;
- (5) Play any radio, cassette, recorder, musical instrument or other such device, unless it is connected to an earphone that limits the sound to the individual user;

(6) Carry any flammable or combustible liquids, live animals, explosives, acids or any other item inherently dangerous or offensive to others, except for seeing eye dogs properly harnessed and accompanied by a blind passenger and for small animals properly packaged;

(7) Stand in front of the white line marked on the forward end of the floor of any bus or otherwise conduct himself in such a manner as to obstruct the vision of the operator;

(8) Park, operate, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, tricycles, unicycles, skateboards, or roller skates;

(9) Park, operate, carry, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, mopeds, motorbikes, or any other such vehicle;

(10) Park, operate, carry, wheel, or chain to any fence, tree, railing, or other structure not specifically designated for such use, noncollapsible bicycles, unless an individual has a current permit issued by the Washington Metropolitan Area Transit Authority for the transporting of noncollapsible bicycles by rail transit and the individual is complying with all the terms and conditions of said permit; provided, that an individual shall surrender said permit upon the request or demand of any agent or employee of the Washington Metropolitan Area Transit Authority. Sections 35-252 and 35-253 shall not apply to a violation of the terms and conditions of said permit.

(c) It is unlawful for any person, while aboard a rail transit car which is transporting passengers within the District of Columbia, knowingly to cause the doors of any rail transit car to open by activating a safety device designed to allow emergency evacuation of passengers. It is an affirmative defense to a prosecution under this subsection that the person charged believed, in good faith, that the action was necessary to protect people from injury or death.

(d) It is unlawful for any person at a rail transit station to stop, impede, interfere with, or tamper with an escalator or elevator or any part of an escalator or elevator apparatus or to use an escalator or elevator emergency stop button, unless this action is taken by a person with the knowledge or the reasonable good faith belief that an emergency makes the action necessary to preserve or protect human life or property, or unless such action is taken by a WMATA employee, other government employees, or WMATA contractor acting pursuant to their official duties.

(Sept. 23, 1975, D.C. Law 1-18, § 2, 22 DCR 1994; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344; Sept. 18, 1981, D.C. Law 4-31, § 2, 28 DCR 3120; June

29, 1984, D.C. Law 5-91, § 3(a), 31 DCR 2539; Oct. 1, 1992, D.C. Law 9-171, § 2(a), 39 DCR 5831.)

Section references. — This section is referred to in §§ 7-1701, 7-1710, 35-252 and 35-253.

Prior Codifications. — 1981 Ed., § 44-223. 1973 Ed., § 44-216.

Legislative history of Law 1-18. — Law 1-18 was introduced in Council and assigned Bill No. 1-17, which was referred to the Committee on Public Safety. The Bill was adopted on first and second readings on May 13, 1975 and May 27, 1975, respectively. Signed by the Mayor on June 24, 1975, it was assigned Act No. 1-26 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-40. — Law 2-40 was introduced in Council and assigned Bill No. 2-121, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on July 26, 1977 and September 13, 1977, respectively. Signed by the Mayor on October 25, 1977, it was assigned Act No. 2-92 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-31. — Law 4-31 was introduced in Council and assigned Bill No. 4-216, which was referred to the Committee on Transportation and Environmental

Affairs. The Bill was adopted on first and second readings on May 19, 1981, and June 2, 1981, respectively. Signed by the Mayor on June 19, 1981, it was assigned Act No. 4-53 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-91. — Law 5-91, "District of Columbia Public Transit Vehicle Safety Amendment Act of 1984," was introduced in Council and assigned Bill No. 5-295, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 10, 1984, and April 30, 1984, respectively. Signed by the Mayor on May 9, 1984, it was assigned Act No. 5-132 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-171. — Law 9-171, the "Public Transit Escalator and Elevator Safety Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-649, which was referred to the Committee on Regional Authorities. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 23, 1992, it was assigned Act No. 9-269 and transmitted to both Houses of Congress for its review. D.C. Law 9-171 became effective on October 1, 1992.

CASE NOTES

ANALYSIS

Equal protection.

In general.

Jurisdiction.

Sufficiency of evidence.

Equal protection.

Given that arrest of minor for violating statute making it unlawful to consume food or drink in rail transit station was supported by probable cause, deprivation of minor's liberty comported with due process requirements, and therefore claim that District of Columbia policy precluding issuance of citation as enforcement means with respect to such offenses by juveniles violated minor's equal protection rights was subject only to rational basis review, despite contention that claim implicated fundamental right to be free from physical restraint by government and consequently warranted heightened standard of review. *Hedgepeth v. Wash. Metro. Area Transit*, 284 F.Supp.2d 145, 2003 U.S. Dist. LEXIS 17184 (2003), affirmed by 386 F.3d 1148, 363 U.S. App. D.C. 260, 2004 U.S. App. LEXIS 22230 (2004).

District of Columbia policy of not issuing citations to juveniles believed to have violated

statute making it unlawful to consume food or drink in rail transit station was rationally related to District's interests in effectively enforcing its laws and ordinances, rehabilitating delinquent juveniles, and notifying and involving parents in rehabilitation measures, and thus did not violate equal protection rights of 12-year-old who was arrested for eating french fry in transit station, particularly given that statute suggested that officers could have taken steps short of arrest and there was no indication that policy was motivated by animosity toward juveniles. *Hedgepeth v. Wash. Metro. Area Transit*, 284 F.Supp.2d 145, 2003 U.S. Dist. LEXIS 17184 (2003), affirmed by 386 F.3d 1148, 363 U.S. App. D.C. 260, 2004 U.S. App. LEXIS 22230 (2004).

"Zero tolerance" policy implemented by metropolitan transit authority during week-long undercover operation directed at violations of District of Columbia's quality of life statutes did not implicate fundamental right of 12-year-old, who, based on probable cause, was arrested for eating french fry in rail transit station, and therefore rational basis standard of review applied to equal protection challenge to policy. *Hedgepeth v. Wash. Metro. Area Transit*, 284

F.Supp.2d 145, 2003 U.S. Dist. LEXIS 17184 (2003), affirmed by 386 F.3d 1148, 363 U.S. App. D.C. 260, 2004 U.S. App. LEXIS 22230 (2004).

Although metropolitan transit authority's implementation of week-long "zero tolerance" policy directed at violations of District of Columbia's quality of life statutes was questionable response to complaints about conduct of juveniles and others at rail transit station, policy, which provided for arrest of juveniles based on probable cause, was not unreasonable exertion of governmental authority, and thus did not violate equal protection rights of 12-year-old who was arrested for eating french fry in rail transit station. *Hedgepeth v. Wash. Metro. Area Transit*, 284 F.Supp.2d 145, 2003 U.S. Dist. LEXIS 17184 (2003), affirmed by 386 F.3d 1148, 363 U.S. App. D.C. 260, 2004 U.S. App. LEXIS 22230 (2004).

Warrantless arrest of 12-year-old for eating french fry in rail transit station, which was supported by probable cause, did not violate Fourth Amendment, notwithstanding contention that arrest was unreasonable and disproportionate in light of nature of offense committed. *Hedgepeth v. Wash. Metro. Area Transit*, 284 F.Supp.2d 145, 2003 U.S. Dist. LEXIS 17184 (2003), affirmed by 386 F.3d 1148, 363 U.S. App. D.C. 260, 2004 U.S. App. LEXIS 22230 (2004).

Imposition of sentence of one-year probation requiring juvenile to obey law, go to school, remain in custody of her mother, and observe weekdays and weekend curfews for violating statute prohibiting smoking on bus did not violate equal protection even though adult offenders would be subject to maximum penalty for first time violation of \$50. D.C. Code 1978 Supp. §§ 44-216, 44-218; U.S. Const. Amend. 14. In re M., 432 A.2d 692, 1981 D.C. App. LEXIS 309 (1981).

In general.

In §§ 1983 action arising out of 12-year-old's arrest for eating french fry in rail transit sta-

tion, district court would take judicial notice of the fact that, under District of Columbia law, juveniles could not be issued a citation in lieu of arrest for a violation of statute making it unlawful to consume food or drink in rail transit station owned or operated by metropolitan transit authority and located within District of Columbia. *Hedgepeth v. Wash. Metro. Area Transit*, 284 F.Supp.2d 145, 2003 U.S. Dist. LEXIS 17184 (2003), affirmed by 386 F.3d 1148, 363 U.S. App. D.C. 260, 2004 U.S. App. LEXIS 22230 (2004).

Under statute proscribing smoking on buses, it would not make any difference if offender was smoking tobacco cigarette or marijuana cigarette. D.C. Code 1978 Supp. § 44-216. In re M., 432 A.2d 692, 1981 D.C. App. LEXIS 309 (1981).

Jurisdiction.

Where juvenile boarded bus in District of Columbia and violation of statute prohibiting smoking on bus occurred in District, juvenile could be convicted of such offense, even though bus route terminated in Maryland. D.C. Code 1978 Supp. § 44-216. In re M., 432 A.2d 692, 1981 D.C. App. LEXIS 309 (1981).

Territorial demarcation in statute prohibiting smoking on buses transporting passengers in regular route services within District's corporate limits merely codifies rule that District has criminal jurisdiction only over conduct occurring within its boundaries. D.C. Code 1978 Supp. § 44-216. In re M., 432 A.2d 692, 1981 D.C. App. LEXIS 309 (1981).

Sufficiency of evidence.

In prosecution of juvenile for smoking on bus, evidence that bus driver saw juvenile take cigarette out of her mouth and exhale smoke was sufficient to sustain conviction. D.C. Code 1978 Supp. § 44-216. In re M., 432 A.2d 692, 1981 D.C. App. LEXIS 309 (1981).

§ 35-252. Carrier authorized to refuse transportation to violators.

A carrier may refuse to transport a person or persons whose immediately observed conduct or behavior would constitute a violation of § 35-216 or § 35-251.

(Sept. 23, 1975, D.C. Law 1-18, § 3, 22 DCR 1995; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344.)

Section references. — This section is referred to in §§ 7-1701, 35-251, and 35-253.

Prior Codifications. — 1981 Ed., § 44-225. 1973 Ed., § 44-217.

Legislative history of Law 1-18. — For

legislative history of D.C. Law 1-18, see Historical and Statutory Notes following § 35-251.

Legislative history of Law 2-40. — For legislative history of D.C. Law 2-40, see Historical and Statutory Notes following § 35-251.

§ 35-253. Penalties.

Violation of § 35-251(b) shall be punishable by a fine of not less than \$10 nor more than \$50 for a 1st offense and by a fine of not less than \$50 nor more than \$100 or by imprisonment for not more than 10 days or both for each 2nd or subsequent offense. A violation of § 35-251(c) or (d) shall be punishable by a fine of not more than \$300, imprisonment of not more than 90 days, not fewer than 30 hours of community service, or a combination of any 2 penalties, except that imprisonment and community service shall not be imposed together. A violation of § 35-216 shall be punishable by a fine of not more than \$300, by imprisonment for not more than 10 days, or both. All prosecutions under §§ 35-216 and 35-251 to 35-253 shall be brought by the Corporation Counsel.

(Sept. 23, 1975, D.C. Law 1-18, § 4, 22 DCR 1995; Feb. 22, 1978, D.C. Law 2-40, § 2, 24 DCR 3344; June 29, 1984, D.C. Law 5-91, § 3(b), 31 DCR 2539; Oct. 1, 1992, D.C. Law 9-171, § 2(b), 39 DCR 5831.)

Section references. — This section is referred to in §§ 7-1701 and 35-251.

Prior Codifications. — 1981 Ed., § 44-226. 1973 Ed., § 44-218.

Legislative history of Law 1-18. — For legislative history of D.C. Law 1-18, see Historical and Statutory Notes following § 35-251.

Legislative history of Law 2-40. — For

legislative history of D.C. Law 2-40, see Historical and Statutory Notes following § 35-251.

Legislative history of Law 5-91. — For legislative history of D.C. Law 5-91, see Historical and Statutory Notes following § 35-251.

Legislative history of Law 9-171. — For legislative history of D.C. Law 9-171, see Historical and Statutory Notes following § 35-251.

CASE NOTES

Equal protection.

Imposition of sentence of one-year probation requiring juvenile to obey law, go to school, remain in custody of her mother, and observe weekdays and weekend curfews for violating statute prohibiting smoking on bus did not

violate equal protection even though adult offenders would be subject to maximum penalty for first time violation of \$50. D.C. Code 1978 Supp. §§ 44-216, 44-218; U.S. Const. Amend. 14. *In re M.*, 432 A.2d 692, 1981 D.C. App. LEXIS 309 (1981).

Subchapter III-A. Notice of Enhanced Penalties.

§ 35-261. Notice of enhanced penalties for commission of offenses against transit operators and Metrorail station managers.

(a)(1) The Washington Metropolitan Area Transit Authority shall post or otherwise provide conspicuous notice of the enhanced penalties for the commission of certain offenses against transit operators and Metrorail station managers in the District of Columbia pursuant to § 22-3751.01 on all Metrobus buses and Metrorail trains operating in the District of Columbia, and at or near all Metrorail station kiosks within the District of Columbia.

(2) The Mayor shall post or otherwise provide similar notice on all DC Circulator buses.

(b) The absence of notice on a vehicle or at a Metrorail station required under this section shall not constitute a defense to or otherwise invalidate or prevent the imposition of the enhanced penalties provided in § 22-3751.01.

(July 23, 2008, D.C. Law 17-206, § 4, 55 DCR 5168.)

Legislative history of Law 17-206. — Law 17-206, the “Transit Operator Protection and Enhanced Penalty Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-233 which was referred to Public Safety and Judiciary. The Bill was adopted on first and

second readings on March 4, 2008, and April 1, 2008, respectively. Signed by the Mayor on April 14, 2008, it was assigned Act No. 17-338 and transmitted to both Houses of Congress for its review. D.C. Law 17-206 became effective on July 23, 2008.

Subchapter IV. Merger of Street Railways.

§ 35-271. Merger of street railways permitted.

Any or all of the street railway companies operating in the District of Columbia are hereby authorized and empowered to merge or consolidate, either by purchase or lease by 1 company of the properties, and/or stocks or securities of any of the others, or by the formation of a new corporation to acquire the properties and/or stocks or securities and to succeed to the powers and obligations of each or any of said companies under such terms and conditions as may be agreed upon by a vote of a majority in amount of the stock of the respective corporations and as may be approved by the Public Service Commission of the District of Columbia; provided, that no merger of said companies shall be finally consummated until the same is approved by a joint resolution of Congress. Such new corporation shall be incorporated under the provisions of Chapters 1, 2, and 4 of Title 29, as far as applicable, with issues of stock at a stated par value and/or of no par value, as may be approved by the Public Service Commission. Congress reserves the right to alter, amend, or repeal this section or any provision thereof.

(Mar. 4, 1925, 43 Stat. 1265, ch. 527, §§ 1, 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 2, 2011, D.C. Law 18-378, § 3(aa), 58 DCR 1720.)

Cross references. — Street railways and bus lines, certificate of convenience and necessity, see § 35-201.

Utility issuance of securities, reorganization or consolidation by stock issuance, see § 34-504.

Section references. — This section is referred to in § 34-1002.

Prior Codifications. — 1981 Ed., § 43-803. 1973 Ed., § 43-503.

Effect of amendments. — D.C. Law 18-378, in subsec. (a)(1), substituted “Chapters 1, 2, and 4 of Title 29” for “Chapter 3 of Title 29”.

Legislative history of Law 18-378. — Law 18-378, the “District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2009”, was introduced in Council and assigned Bill No. 18-500, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 27, 2011, it was assigned Act No. 18-724 and transmitted to both Houses of Congress for its review. D.C. Law 18-378 became effective on July 2, 2011.

CHAPTER 3. EMPLOYERS' LIABILITY.

Sec.

35-301. Liability of common carriers for injuries to employees.

35-302. Contributory negligence no bar to recovery.

Sec.

35-303. Insurance contracts no bar to recovery.

35-304. Commencement of action.

35-305. Certain prior laws not affected.

§ 35-301. Liability of common carriers for injuries to employees.

Every common carrier engaged in trade or commerce in the District of Columbia, or in any territory of the United States, or between the several states, or between any territory and another, or between any territory or territories and any state or states, or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

(June 11, 1906, 34 Stat. 232, ch. 3073, § 1.)

Section references. — This section is referred to in §§ 35-304 and 35-305.

Prior Codifications. — 1981 Ed., § 44-401. 1973 Ed., § 44-401.

CASE NOTES

ANALYSIS

Common carriers.

Construction with other laws.

In general.

Common carriers.

"Common carrier" is one who by occupation or calling carries chattels for all persons who may employ and remunerate him. *Southern Ry. Co. v. Taylor*, 16 F.2d 517, 1926 U.S. App. LEXIS 3895 (1926).

Railroad, owning office building and operating passenger elevator, held not "common carrier," within statute abolishing fellow-servant doctrine (*Employers' Liability Act* June 11, 1906 [D.C. Code 1929, T. 19, §§ 81-85]; *Employers' Liability Act* April 22, 1908, as amended by Act April 5, 1910 [45 U.S.C. §§ 51-59]). *Southern Ry. Co. v. Taylor*, 16 F.2d 517, 1926 U.S. App. LEXIS 3895 (1926).

Construction with other laws.

The Federal Employers' Liability Act April 22, 1908 (45 U.S.C. §§ 51-59), which applied to

interstate carriers by railroad, and which permitted the defense of assumption of risk, except in the cases specified in section 4 of the act (45 U.S.C. § 54), superseded in the District of Columbia Act June 11, 1906 (D.C. Code 1929, T. 19, §§ 81-85), which had been held unconstitutional as applied to carriers operating in the states, but valid as to carriers within the District of Columbia, and which abolished the doctrine of assumption of risk, at least in so far as carriers by railroads within the district were concerned since it is not to be supposed that Congress intended that two acts providing for relief in the same class of cases, one allowing the defense of assumption of risk and the other not, should be concurrently in force. *Washington Terminal Co. v. Sampson*, 289 F. 577, 1923 U.S. App. LEXIS 2004 (1923).

Railroad conductor's personal injury claim against railroad, brought under Federal Employers' Liability Act (FELA) based on claim that train was traveling at excessive speed, was preempted by Federal Railroad Safety Act (FRSA), insofar as train was traveling at speed

within regulation limits for that section of track. *Herndon v. AMTRAK*, 814 A.2d 934, 2003 D.C. App. LEXIS 3 (2003).

In general.

Statute abolishing fellow-servant doctrine as

to common carriers held to relate solely to commerce (Employers' Liability Act June 11, 1906 [D.C. Code 1929, T. 19, §§ 81-85]). *South-ern Ry. Co. v. Taylor*, 16 F.2d 517, 1926 U.S. App. LEXIS 3895 (1926).

§ 35-302. Contributory negligence no bar to recovery.

In all actions brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributed negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

(June 11, 1906, 34 Stat. 232, ch. 3073, § 2.)

Section references. — This section is referred to in §§ 35-304 and 35-305.

Prior Codifications. — 1981 Ed., § 44-402. 1973 Ed., § 44-402.

§ 35-303. Insurance contracts no bar to recovery.

No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee; provided, however, that upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative.

(June 11, 1906, 34 Stat. 232, ch. 3073, § 3.)

Section references. — This section is referred to in §§ 35-304 and 35-305.

Prior Codifications. — 1981 Ed., § 44-403. 1973 Ed., § 44-403.

§ 35-304. Commencement of action.

No action shall be maintained under this chapter unless commenced within 1 year from the time the cause of action accrued.

(June 11, 1906, 34 Stat. 232, ch. 3073, § 4.)

Section references. — This section is referred to in § 35-305.

Prior Codifications. — 1981 Ed., § 44-404. 1973 Ed., § 44-404.

CASE NOTES

In general.

Street railway held not "common carrier by

railroad" within statute authorizing injured employee to sue within two years, but one-year

limitation statute applies (Federal Employers' Liability Act 1908 [45 U.S.C. §§ 51-59]; Employers' Liability Act 1906 [D.C. Code 1929, T. 19, §§ 81-85]). *Mangum v. Capital Traction Co.*, 39 F.2d 286, 1930 U.S. App. LEXIS 4031 (1930).

Traction company operating on city streets and not having power of eminent domain held

"street railway," as respects limitations for injuries to its employee (Federal Employers' Liability Act 1908 [45 U.S.C. §§ 51-59]; Employers' Liability Act 1906 [D.C. Code 1929, T. 19, §§ 81-85]). *Mangum v. Capital Traction Co.*, 39 F.2d 286, 1930 U.S. App. LEXIS 4031 (1930).

§ 35-305. Certain prior laws not affected.

Nothing in §§ 35-301 to 35-304, inclusive, shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the Safety Appliance Act of March 2, 1893, as amended April 1, 1896, and March 2, 1903.

(June 11, 1906, 34 Stat. 233, ch. 3073, § 5.)

Section references. — This section is referred to in § 35-304.

Prior Codifications. — 1981 Ed., § 44-405. 1973 Ed., § 44-405.

References in text. — The Act of March 2,

1893, as amended, referred to in this section, was codified as 45 U.S.C. § 1 et seq., and was repealed in 1994 by P.L. 103-272, § 7(b). For present law, see 49 U.S.C. § 20301 et seq.

SUBTITLE II. REPEALED PROVISIONS.

CHAPTER 4. PASSENGER MOTOR VEHICLES FOR HIRE.

Sec.
35-401 to 35-408. [Repealed].

§ 35-401. Passenger motor vehicles for hire to carry insurance; exceptions; liability of insurance company absolute. [Repealed].

Repealed.

(June 29, 1938, 52 Stat. 1233, ch. 809, § 1; Dec. 15, 1942, 56 Stat. 1051, ch. 734; Aug. 28, 1958, 72 Stat. 952, Pub. L. 85-792, § 2; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Mar. 25, 1986, D.C. Law 6-97, § 22(a), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 44-301.
1973 Ed., § 44-301.

Legislative history of Law 6-97. — Law 6-97 was introduced in Council and assigned Bill No. 6-159, which was referred to the Committee on Public Services and Cable Television.

The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-125 and transmitted to both Houses of Congress for its review.

§ 35-402. Issuance of insurance policies by authorized company; bonds to be secured; reserves for losses, unearned premiums and other liabilities required; rules and regulations; conditions for cancellation of bonds and insurance policies. [Repealed].

Repealed.

(June 29, 1938, ch. 809, § 2; Aug. 28, 1958, 72 Stat. 952, Pub. L. 85-792, § 2; Mar. 25, 1986, D.C. Law 6-97, § 22(a), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 44-302.
1973 Ed., § 44-302.

Legislative history of Law 6-97. — For Law 6-97, see notes following § 35-401.

§ 35-403. Operation of vehicle without approved bond or policy prohibited [Repealed].

Repealed.

(June 29, 1938, ch. 809, § 3; Aug. 28, 1958, 72 Stat. 953, Pub. L. 85-792, § 2; Mar. 25, 1986, D.C. Law 6-97, § 22(a), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 44-303.
1973 Ed., § 44-303.

Legislative history of Law 6-97. — For Law 6-97, see notes following § 35-401.

§ 35-404. Commission authorized to make rules and regulations. [Repealed].

Repealed.

(June 29, 1938, ch. 809, § 4; Aug. 28, 1958, 72 Stat. 953, Pub. L. 85-792, § 2; Mar. 25, 1986, D.C. Law 6-97, § 22(a), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 44-304.
1973 Ed., § 44-304.

Legislative history of Law 6-97. — For Law 6-97, see notes following § 35-401.

§ 35-405. Alternate provisions for insurance coverage; blanket policy for more than one vehicle; sinking fund in lieu of insurance; conditions for creation and maintenance of sinking fund; proof of financial responsibility; admission of liability by owner for tortious acts of drivers of vehicles; sinking fund exempt from attachment or levy for other obligations of depositor. [Repealed].

Repealed.

(June 29, 1938, ch. 809, § 5; Aug. 28, 1958, 72 Stat. 953, Pub. L. 85-792, § 2; Mar. 25, 1986, D.C. Law 6-97, § 22(a), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 44-305.
1973 Ed., § 44-305.

Legislative history of Law 6-97. — For Law 6-97, see notes following § 35-401.

§ 35-406. “Owner” defined. [Repealed].

Repealed.

(June 29, 1938, ch. 809, § 6; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 2; Mar. 25, 1986, D.C. Law 6-97, § 22(a), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 44-306.
1973 Ed., § 44-306.

Legislative history of Law 6-97. — For Law 6-97, see notes following § 35-401.

§ 35-407. Penalties for violation of chapter. [Repealed].

Repealed.

(June 29, 1938, ch. 809, § 7; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85-792, § 2; Oct. 5, 1985, D.C. Law 6-42, § 437, 32 DCR 4450; Mar. 25, 1986, D.C. Law 6-97, § 22(a), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 44-307.
1973 Ed., § 44-307.

Legislative history of Law 6-97. — For Law 6-97, see notes following § 35-401.

§ 35-408. Delegation of authority of Council to Superintendent. [Repealed].

Repealed.

(June 29, 1938, ch. 809, § 8; Apr. 23, 1977, D.C. Law 1-127, § 2, 23 DCR 9691; Mar. 25, 1986, D.C. Law 6-97, § 22(a), 33 DCR 703.)

Prior Codifications. — 1981 Ed., § 44-308.
1973 Ed., § 44-308.

Legislative history of Law 6-97. — For Law 6-97, see notes following § 35-401.

TITLE 36. TRADE PRACTICES.

Chapter

1. Registration of Beverage Bottles.
2. Registration of Labor Union Labels.
3. Retail Service Stations.
4. Trade Secrets.
5. Foreign Trade Zones.

CHAPTER 1. REGISTRATION OF BEVERAGE BOTTLES.

Subchapter I. General

Sec.

- 36-101. Filing and publication of bottle description.
- 36-102. Unauthorized use or sale of registered bottles.

Subchapter II. Registration of Milk Containers

- 36-121. Filing and publication of container description.
- 36-122. Unauthorized use or sale of registered bottles.
- 36-123. Defacing or destroying registered containers.
- 36-124. Refusal to surrender to registrant a registered container prima facie evidence of unlawful use.
- 36-125. Proceeding in Superior Court to ascertain violations; search warrant.
- 36-126. Title to registered mark to be acquired only by written consent of registrant.

Sec.

- 36-127. Rights of former registrants preserved.
- 36-128. "Person" defined.
- 36-129. Type of containers to which law is applicable.
- 36-130. Prosecutions; penalties.
- 36-131. Injunctive relief.

Subchapter III. Registration of Containers for Beverages Composed Principally of Milk

- 36-151. Definitions.
- 36-152. Filing and publication of vessel description.
- 36-153. Unauthorized use, defacing, or sale of registered vessel.
- 36-154. Use or possession of vessel without purchase of contents prima facie evidence of unlawful use.
- 36-155. Proceeding in Superior Court to ascertain violations; search warrant.
- 36-156. Recorder of Deeds to make regulations.
- 36-157. Actions in tort permissible.

Subchapter I. General.

§ 36-101. Filing and publication of bottle description.

All manufacturers and vendors of mineral waters and other beverages allowed by law to be sold in bottles, upon which their names or marks shall be respectively impressed, may file with the Recorder of Deeds of the District of Columbia a description of such bottles and of the names or marks thereon, and shall cause the same to be published for not less than 2 weeks successively in a daily or weekly newspaper published in the District.

(Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 877; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 6.)

Prior Codifications. — 1981 Ed., § 48-101. 1973 Ed., § 48-101.

§ 36-102. Unauthorized use or sale of registered bottles.

It shall be unlawful for any person, without the permission of the owner

thereof, to fill with mineral waters or other beverages any such bottles so marked, for sale, or to traffic in any such bottles so marked and not bought by him of such owner; and every person so offending shall be liable to a penalty of \$.50 for every bottle so filled, or sold, or used, or disposed of, or bought, or trafficked in, for the 1st offense, and of \$5 for every subsequent offense, to be recovered as other fines are recovered in the District.

(Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 878.)

Cross references. — Deceptive imitation of goods, criminal penalty, see § 22-1502.

Prior Codifications. — 1981 Ed., § 48-102. 1973 Ed., § 48-102.

Subchapter II. Registration of Milk Containers.

§ 36-121. Filing and publication of container description.

All persons, firms, partnerships, or corporations engaged in the bottling, selling, or distributing of milk or cream in bottles, cans, crates, or other containers within the District of Columbia, on which the name, trademark, or other device designating the owner is branded, blown, cut, carved, embossed, or impressed, may file with the Recorder of Deeds of the District of Columbia a description of the name or names, marks or devices so used by them, the said description to be a statement under oath by the owner of said name, mark, or device. The said owner of said name, mark, or device shall, after filing the description as above required, cause the same to be published at least once a week for 2 consecutive weeks in a newspaper of general circulation in the District of Columbia. The said owner of said name, mark, or device shall thereafter file with the Recorder of Deeds of the District of Columbia an affidavit made by himself or any other competent person stating that said description has been published as herein provided, and shall file in the office of the Health Department of the District of Columbia a copy of said registration and said affidavit of publication, both duly certified as true copies by the Recorder of Deeds of the District of Columbia. The registration of any such name, mark, or device shall be complete on the filing of said certified copies in the Health Office of the District of Columbia, and thereafter the name, mark, or device shall be considered as registered in accordance with this subchapter, and any bottle, can, crate, or other container on which said name, mark, or device shall be or shall be placed shall be considered as registered in accordance with this subchapter.

(July 3, 1926, 44 Stat. 809, ch. 737, § 1; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 7.)

Cross references. — Labeling of milk containers, see § 37-201.14.

Milk, cream, and ice cream, see § 48-601 et seq.

Prior Codifications. — 1981 Ed., § 48-201. 1973 Ed., § 48-201.

Editor's notes. — Health Department abolished: The Health Department of the District of

Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and

redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and para-medical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D. C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions

and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 36-122. Unauthorized use or sale of registered bottles.

Whoever shall by himself or his agent fill, use, sell, offer for sale, give, buy, traffic in, or shall have in his possession with intent to fill, use, sell, offer for sale, give, buy, or traffic in any registered milk bottle or bottles, can or cans, crate or crates, or other containers on which appears the name, mark, or device, registered by another person, shall be guilty of a misdemeanor, and upon conviction shall be subject to the penalties in this subchapter.

(July 3, 1926, 44 Stat. 810, ch. 737, § 2.)

Prior Codifications. — 1981 Ed., § 48-202. 1973 Ed., § 48-202.

§ 36-123. Defacing or destroying registered containers.

Whoever shall by himself or his agent willfully deface, erase, alter, obliterate, cover up, or otherwise remove or conceal any registered name, mark, or device registered by another and being on any milk bottle, can, crate, or other container, or shall willfully break, destroy, or otherwise injure any registered milk bottle, can, crate, or other container which has been registered by another shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties prescribed in this subchapter.

(July 3, 1926, 44 Stat. 810, ch. 737, § 3.)

Prior Codifications. — 1981 Ed., § 48-203. 1973 Ed., § 48-203.

§ 36-124. Refusal to surrender to registrant a registered container prima facie evidence of unlawful use.

In any prosecution under this subchapter, the refusal of any person having possession of any registered milk bottle, can, crate, or other container to surrender possession of the same to the registrant of the name, mark, or device appearing thereon, after notice and demand by said registrant or his agent, shall be prima facie evidence of the unlawful use or traffic in the same contrary to the provisions of this subchapter.

(July 3, 1926, 44 Stat. 810, ch. 737, § 4.)

Prior Codifications. — 1981 Ed., § 48-204. 1973 Ed., § 48-204.

§ 36-125. Proceeding in Superior Court to ascertain violations; search warrant.

Whenever any person who has registered milk bottles, cans, crates, or other containers in accordance with the provisions of this subchapter shall by himself or his agent make oath before the Clerk of the Superior Court of the District of Columbia that he has reason to believe, and does believe, that any of his registered milk bottles, cans, crates, or other containers are being filled, used, bought, trafficked in, held, sold, offered for sale, broken, injured, or destroyed within the District of Columbia contrary to the provisions of this subchapter, by any person without the written consent of the registrant, the judge of the Superior Court of the District of Columbia to whom said complaint under oath is made may forthwith issue a search warrant directed to any police officer or other proper officer to search the premises whereon or wherein said registered milk bottles, cans, crates, or other containers are unlawfully held and may issue a warrant for the arrest of the person complained against; and if any one or more of such registered milk bottles, cans, crates, or other containers, or any parts of the same, shall be found upon the premises by the officer executing the said search warrant, he shall seize and take possession of all such registered milk bottles, cans, crates, or other containers, or parts thereof, and shall cause the same to be brought before the judge of the Superior Court of the District of Columbia, who shall award the said registered milk bottles, cans, crates, and other containers to the person entitled to the same.

(July 3, 1926, 44 Stat. 810, ch. 737, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Cross references. — Return of property by Property Clerk, see § 5-119.06.
Search warrants, see § 23-521 et seq.

Prior Codifications. — 1981 Ed., § 48-205.
1973 Ed., § 48-205.

§ 36-126. Title to registered mark to be acquired only by written consent of registrant.

No title may be acquired to any mark, name, or device, or any milk bottle, can, crate, or other container registered in accordance with this subchapter except by the consent in writing of the person who registered the same.

(July 3, 1926, 44 Stat. 811, ch. 737, § 6.)

Prior Codifications. — 1981 Ed., § 48-206. 1973 Ed., § 48-206.

§ 36-127. Rights of former registrants preserved.

All persons who prior to July 3, 1926, registered any milk bottles, cans, crates, or other containers in accordance with the laws existing at the time of

said registration shall be exempted from filing a new description in accordance with the terms of this subchapter and shall be entitled to the rights and benefits accruing under this subchapter in the same manner as if said registration was made in accordance with this subchapter; provided, that a copy of said registration duly certified by the Clerk of the United States District Court for the District of Columbia was within 30 days from and after July 3, 1926, filed in the Health Office of the District of Columbia.

(July 3, 1926, 44 Stat. 811, ch. 737, § 7; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127.)

Prior Codifications. — 1981 Ed., § 48-207. 1973 Ed., § 48-207.

§ 36-128. “Person” defined.

Whenever the word “person” is used in this subchapter, it shall apply equally as well to 1 or more persons, copartnerships, and corporations.

(July 3, 1926, 44 Stat. 811, ch. 737, § 8.)

Prior Codifications. — 1981 Ed., § 48-208. 1973 Ed., § 48-208.

§ 36-129. Type of containers to which law is applicable.

The provisions of this subchapter shall apply to all bottles, cans, crates, and other containers in which milk or cream of any grade, quality, or character is sold or offered for sale and shall include bottles, cans, crates, and other containers in which skimmed milk, buttermilk, double cream, and sour milk are sold.

(July 3, 1926, 44 Stat. 811, ch. 737, § 9.)

Prior Codifications. — 1981 Ed., § 48-209. 1973 Ed., § 48-209.

§ 36-130. Prosecutions; penalties.

The violation of any of the provisions of this subchapter shall be a misdemeanor, and prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia. Upon conviction of a violation of the provisions of this subchapter the penalty shall be a fine of not more than \$50 for the 1st offense and a fine of not more than \$100 for the 2nd and each subsequent offense.

(July 3, 1926, 44 Stat. 811, ch. 737, § 10; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Cross references. — Deceptive imitation of goods, criminal penalty, see § 22-1502.

Prior Codifications. — 1981 Ed., § 48-210. 1973 Ed., § 48-210.

§ 36-131. Injunctive relief.

Whenever any person who has registered milk bottles, cans, crates, or other containers as herein provided shall have, upon complaint under oath, prosecuted any other person for violation of the provisions of this subchapter in the use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of such registered milk bottles, cans, crates, or other containers and said other persons shall have been convicted on 3 occasions at least for the said unlawful use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers, then the said registrant of said milk bottles, cans, crates, or other containers shall be entitled, upon making complaint to a judge of the Superior Court of the District of Columbia, to have issued an injunction directed to said violator enjoining him from further illegal use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers.

(July 3, 1926, 44 Stat. 811, ch. 737, § 11; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, § 155(c)(54).)

Prior Codifications. — 1981 Ed., § 48-211. 1973 Ed., § 48-211.

*Subchapter III. Registration of Containers for Beverages
Composed Principally of Milk.*

§ 36-151. Definitions.

The following words shall, in addition to their ordinary meaning, have the meaning herein given:

(1) The word “person” or “persons,” in §§ 36-152 to 36-155 and 36-157 shall include firms or corporations.

(2) The word “vessel” or “vessels,” in §§ 35-152 to 35-155 shall include cans, bottles, siphons, and boxes.

(3) The word “mark” or “marks” shall include labels, trademarks, and all other methods of distinguishing ownership in vessels, whether printed upon labels or blown into bottles or engraved and impressed upon cans or boxes.

(Mar. 3, 1901, ch. 854, § 878a; Feb. 27, 1907, 34 Stat. 1006, ch. 2086.)

Prior Codifications. — 1981 Ed., § 48-301. 1973 Ed., § 48-301.

§ 36-152. Filing and publication of vessel description.

Persons engaged in producing, manufacturing, bottling, or selling any lawful beverages composed principally of milk, in vessels with their name, trademark, or other distinctive mark, and the word “registered” branded, engraved, blown, or otherwise produced thereon, or on which a pasted trademark label is put upon which the word “registered” is also distinctly printed, may file with

the Recorder of Deeds of the District of Columbia a description by facsimile, or a sample of an original package so marked or branded or blown, showing plainly such names and marks thereon, together with their name in full, or their corporate name, and also their place of business in the District of Columbia, and if so filed shall cause the same to be published for not less than 2 weeks successively in a daily or weekly newspaper published in the District of Columbia.

(Mar. 3, 1901, ch. 854, § 878b; Feb. 27, 1907, 34 Stat. 1006, ch. 2086; June 25, 1936, 49 Stat. 1921, ch. 804; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 6.)

Cross references. — Deceptive imitation of goods, criminal penalty, see § 22-1502.

Labeling of milk containers, see § 37-201.14.

Milk, cream, and ice cream, see § 48-601 et seq.

Registration of milk containers, see § 36-121 et seq.

Section references. — This section is referred to in §§ 36-151, 36-153 and 36

Prior Codifications. — 1981 Ed., § 48-302. 1973 Ed., § 48-302.

§ 36-153. Unauthorized use, defacing, or sale of registered vessel.

Whoever, except the person who shall have filed and published a description of the same as aforesaid, fills with milk or cream, or other beverage, as aforesaid, with intent to sell the same, any vessel so marked and distinguished as aforesaid, the description of which shall have been filed and published as provided in § 36-152, or defaces, erases, covers up, or otherwise removes or conceals any such name or mark as aforesaid, or the word "registered," thereon, or sells, buys, gives, takes, or otherwise disposes of, or traffics in the same without having purchased the contents thereof from the person whose name is in or upon such vessel, or without the written consent of such person, shall, for the 1st offense, be punished by a fine of not less than \$.50 for each such vessel, or by imprisonment for not less than 10 days nor more than 1 year, or by both such fine and imprisonment; and for each subsequent offense by a fine of not less than \$1 nor more than \$5 for each such vessel, or by imprisonment for not less than 20 days nor more than 1 year, or by both such fine and imprisonment.

(Mar. 3, 1901, ch. 854, § 878c; Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

Cross references. — Deceptive imitation of goods, criminal penalty, see § 22-1502.

Section references. — This section is referred to in §§ 36-151 and 36-154.

Prior Codifications. — 1981 Ed., § 48-303. 1973 Ed., § 48-303.

§ 36-154. Use or possession of vessel without purchase of contents prima facie evidence of unlawful use.

The use or possession by any person not engaged in the production or sale of beverage as aforesaid, except the person who shall so have filed and published a description of the same as aforesaid, of any vessel marked or distinguished as aforesaid, the description of which shall have been filed and published as

aforesaid, without purchase of the contents thereof from, or the written consent of, the person who shall so have filed and published the said description, shall be prima facie evidence of the unlawful use, possession of, or traffic in, such vessel, and the person so using or in possession of the same, except the person who shall so have filed and published the said description as aforesaid, shall be punished as provided in § 36-153.

(Mar. 3, 1901, ch. 854, § 878d; Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

Section references. — This section is referred to in § 36-151.

Prior Codifications. — 1981 Ed., § 48-304. 1973 Ed., § 48-304.

§ 36-155. Proceeding in Superior Court to ascertain violations; search warrant.

Upon complaint of any person who has complied with § 36-152, or of his agent, to the Superior Court of the District of Columbia, or 1 of the judges thereof, that any person within the District of Columbia is guilty of the violation of any provision of this subchapter, the said Court or judge may issue a search warrant to discover and obtain such vessels as aforesaid and their contents, and may also cause to be brought before the said Court or judge the person so believed to be guilty, or his agent or employee, in whose possession or upon whose wagon or premises any such vessel or vessels may be found; and any such person, agent, or employee found guilty of a violation of any of the provisions of this subchapter shall be punished as aforesaid, and the said Court or judge shall also order the property taken upon any such search warrant to be delivered to its owner.

(Mar. 3, 1901, ch. 854, § 878e; Feb. 27, 1907, 34 Stat. 1007, ch. 2086; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Cross references. — Search warrants, see § 23-521 et seq.

Prior Codifications. — 1981 Ed., § 48-305. 1973 Ed., § 48-305.

Section references. — This section is referred to in § 36-151.

§ 36-156. Recorder of Deeds to make regulations.

The Recorder of Deeds of the District of Columbia is authorized to make regulations and prescribe forms for the filing of labels, trademarks, or other distinctive marks under the provisions of this subchapter.

(Mar. 3, 1901, ch. 854, § 878f; Feb. 27, 1907, 34 Stat. 1007, ch. 2086; June 25, 1936, 49 Stat. 1921, ch. 804; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 6.)

Prior Codifications. — 1981 Ed., § 48-306. 1973 Ed., § 48-306.

§ 36-157. Actions in tort permissible.

Nothing in this subchapter shall prevent or restrain any person who is the

legal owner of a trademark or label from proceeding in an action of tort against any person found guilty of violating this subchapter.

(Mar. 3, 1901, ch. 854, § 878g; Feb. 27, 1907, 34 Stat. 1007, ch. 2086.)

Section references. — This section is referred to in § 36-151.

Prior Codifications. — 1981 Ed., § 48-307.
1973 Ed., § 48-307.

CHAPTER 2. REGISTRATION OF LABOR UNION LABELS.

Sec.

36-201. Adoption of label authorized; filing; certified copies.

36-202. Unauthorized use of registered label; injunctive relief.

Sec.

36-203. Penalties.

§ 36-201. Adoption of label authorized; filing; certified copies.

A union or association of employees in the District of Columbia may adopt a device in the form of a label, brand, mark, name, or other character for the purpose of designating the products of the labor of the members thereof. A drawing of such device may be filed in the Office of the Recorder of Deeds of the District of Columbia and the Recorder shall register same in a book to be provided for such purpose and be entitled to collect \$1 for each registration. A certified copy of the drawing may be obtained upon the payment of \$1 for each certification.

(Feb. 18, 1932, 47 Stat. 50, ch. 47, § 1; July 5, 1966, 80 Stat. 263, Pub. L. 89-493, § 7(b).)

Section references. — This section is referred to in § 36-152.

Prior Codifications. — 1981 Ed., § 48-401. 1973 Ed., § 48-401.

CASE NOTES

In general.

An action of debt was maintainable in the District of Columbia against an unincorporated labor union in its common name where service of process was duly made on its president. Federal Rules of Civil Procedure, rule 4(d)(3), 18 U.S.C.; D.C. Code 1940, §§ 47-1502(d), 48-401, 48-402. *Busby v. Electric Emp. Union*, 147 F.2d 865, 1945 U.S. App. LEXIS 3370 (1945).

Under the law of the District of Columbia, an unincorporated labor union has capacity in its own name to sue and be sued in an ordinary law action and may be served with process in accordance with federal rules. Federal Rules of Civil Procedure, rules 4(d)(3), 17(b), 18 U.S.C.; D.C. Code 1940, §§ 47-1502(d), 48-401, 48-402. *Busby v. Electric Emp. Union*, 147 F.2d 865, 1945 U.S. App. LEXIS 3370 (1945).

§ 36-202. Unauthorized use of registered label; injunctive relief.

No person shall in any way use or display the label, brand, mark, name, or other character adopted by any such union or association as provided in § 36-201 without the consent or authority of such union or association; or counterfeit or imitate any such label, brand, mark, name, or other character, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor, upon which any such counterfeit or imitation is attached, affixed, printed, stamped, or impressed, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor contained in any box, case, can, or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed. If copies of such device have been filed, the union or association

may maintain an action in the Superior Court of the District of Columbia to enjoin the manufacture, use, display, or sale of counterfeit or colorable imitations of such device, or of goods bearing the same, or the unauthorized use or display of such device or of goods bearing the same, and the Court may restrain such wrongful manufacture, use, display, or sale, and every unauthorized use or display by others of the genuine devices so registered and filed, if such use or display is not authorized by the owner thereof, and may award to the plaintiff such damages resulting from such wrongful manufacture, use, display, or sale as may be proved, together with the profits derived therefrom.

(Feb. 18, 1932, 47 Stat. 50, ch. 47, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 573, Pub. L. 91-358, title I, § 155(c)(55).)

Section references. — This section is referred to in § 36-153.

Prior Codifications. — 1981 Ed., § 48-402. 1973 Ed., § 48-402.

CASE NOTES

In general.

An action of debt was maintainable in the District of Columbia against an unincorporated labor union in its common name where service of process was duly made on its president. Federal Rules of Civil Procedure, rule 4(d)(3), 18 U.S.C.; D.C. Code 1940, §§ 47-1502(d), 48-401, 48-402. *Busby v. Electric Emp. Union*, 147 F.2d 865, 1945 U.S. App. LEXIS 3370 (1945).

Under the law of the District of Columbia, an unincorporated labor union has capacity in its own name to sue and be sued in an ordinary law action and may be served with process in accordance with federal rules. Federal Rules of Civil Procedure, rules 4(d)(3), 17(b), 18 U.S.C.; D.C. Code 1940, §§ 47-1502(d), 48-401, 48-402. *Busby v. Electric Emp. Union*, 147 F.2d 865, 1945 U.S. App. LEXIS 3370 (1945).

§ 36-203. Penalties.

A person violating any of the provisions of § 36-202 shall be guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment for not less than 3 months nor more than 1 year, or by both such fine and imprisonment.

(Feb. 18, 1932, 47 Stat. 51, ch. 47, § 3.)

Cross references. — Deceptive imitation of goods, criminal penalty, see § 22-1502.

Prior Codifications. — 1981 Ed., § 48-403. 1973 Ed., § 48-403.

CHAPTER 3. RETAIL SERVICE STATIONS.

<i>Subchapter I. Definitions</i>		Sec.	
Sec.			tions affecting marketing agree-
36-301.01. Definitions.			ments.
<i>Subchapter II. Operation of Retail Service Stations</i>		36-303.02.	Disclosures to prospective retail dealers.
36-302.01. Registration of intent to sell.		36-303.03.	Termination, cancellation, and failure to renew.
36-302.02. Restrictions on operation.		36-303.04.	Retail dealer's remedies.
36-302.03. Nondiscrimination required of wholesalers.		36-303.05.	Sale, assignment, or other transfer of a marketing agreement.
36-302.04. Exemption from enforcement of § 36-302.02; regulations; reports.		36-303.06.	Civil actions.
36-302.05. Violations; notice, order, injunction, and penalties.		36-303.07.	Application of subchapter.
<i>Subchapter II-A. Security at Retail Service Stations</i>		<i>Subchapter IV. Moratorium on Conversions to Limited Service Retail Service Stations</i>	
36-302.21. Security requirements for retail service stations.		36-304.01.	Prohibition on conversions.
36-302.22. Retail service station security public service announcement.		<i>Subchapter IV-A. Franchisee Purchase Rights</i>	
<i>Subchapter III. Marketing Agreements</i>		36-304.11 to 36-304.15.	[Expired].
36-303.01. Nonwaiverable conditions; condi-		<i>Subchapter V. General Provisions</i>	
		36-305.01.	Statement of public policy.
		36-305.02.	Severability.

Subchapter I. Definitions.

§ 36-301.01. Definitions.

For the purpose of this chapter, the following words, terms, phrases, and their derivations shall have the meanings respectively ascribed to them in this section unless the context clearly indicates otherwise:

(1) "Automotive product" means any product or item of merchandise, including any tire, battery, or similar motor vehicle accessory or part, other than motor fuels or petroleum products, which is intended to be or is capable of being used with, in, or on a motor vehicle, whether or not such product is essential for the proper operation and maintenance of a motor vehicle and whether or not such product is also suitable or is actually sold or used for non-motor vehicle purposes.

(2) "Distributor" means any person who is engaged in the business of selling, supplying, or distributing on consignment or otherwise, motor fuels or petroleum products to or through retail service stations which it owns, leases, or otherwise controls and who also maintains a marketing agreement with a retail dealer for the sale or distribution of motor fuels or petroleum products to a retail service station, whether or not such distributor owns, leases, or otherwise controls such retail service station.

(3) "Engaging in the retail sale of motor fuel" means that at least 30 per centum of the retail dealer's gross revenue, excluding such revenue as is derived from the retail sale of petroleum products and automotive products and from the repair, maintenance, and servicing of motor vehicles, is derived from the retail sale of motor fuel.

(4) "Equipment" means any movable tangible personal property which is used in the business of operating a retail service station, other than property which is either consumed in the business, except through depreciation or amortization, or held for immediate or ultimate sale to customers. The term "equipment" also includes any motor fuel dispensing pump, lift, storage tank, machine, appliance or other similar property which was movable tangible personal property at the time such property was purchased, leased, or otherwise acquired by the operator of a retail service station, whether or not such property was subsequently attached or affixed to any real property.

(5) "Failure to renew" means any exercise of a right or power created by the marketing agreement or by law to terminate, cancel, or otherwise put an end to a marketing agreement at the expiration of its term, including the exercise of a right or power to put an end to a marketing agreement which would otherwise be extended or renewed automatically for a definite or indefinite term and any failure to extend or renew a marketing agreement which does not provide for automatic extension or renewal. The term "failure to renew" shall also include any termination or cancellation of a marketing agreement which does not specify an expiration date or term.

(6) "Goodwill" means the tendency or habit of customers to return for trade to the retail service station with which they have been previously dealing and includes, with respect to the value of a retail dealer's goodwill, whatever value, advantage, or benefit is added to the value of a retail service station business as a result of the efforts of the retail dealer and his employees during the term or terms of a marketing agreement with the distributor, and of any preceding marketing agreements between the same parties, including, but not limited to, whatever value, advantage, or benefit is added by the reputation of the retail dealer and his employees for competence, skill, quality, ability, reliability, punctuality, personal attention, honesty, integrity, fair dealing, reasonable prices, and other attributes in providing motor fuels, petroleum products, and automotive products and in providing motor vehicle repair, maintenance, and other services, over and above the value of any inventory, equipment, real estate, and other tangible property, of a trademark owned, leased, or otherwise controlled by the distributor, or of advertising or other promotions furnished or financed, in whole or part, by the distributor, which value, advantage, or benefit can reasonably be expected to remain at the retail service station location after the departure of the retail dealer. In determining the value of a retail dealer's goodwill, any increase in the volume of motor fuel, petroleum product, and automotive product sales, any increase in the volume of repair, maintenance, and other services provided, any increase in the number of customers, any financial or other contributions to advertising or promotions by the retail dealer, the number of years the retail dealer has operated the retail service station, and other similar factors should be taken into account in light of all other factors and circumstances.

(6A) "Jobber" means a wholesale supplier or distributor of motor fuel.

(7) "Marketing agreement" means any written agreement, or combination of agreements, including any contract, lease, franchise, or other agreement, which is entered into between a distributor and a retail dealer and pursuant to which:

(A) The distributor agrees to sell, supply, or distribute motor fuel to the retail dealer for the purpose of engaging in the retail sale of such motor fuel at a retail service station; and

(B) The retail dealer is granted the right, privilege, or authority, in addition to whatever else may be provided, to:

(i) Use any trademark owned, leased, or otherwise controlled by the distributor for the purpose of engaging in the retail sale of motor fuel at a retail service station; or

(ii) Occupy a retail service station owned, leased, or otherwise controlled by the distributor for the purpose of engaging in the retail sale of motor fuel.

(8) "Merchantable product" means any product which is in such a condition that it is reasonably resalable in the normal course of the operation of a retail service station business at a price normally charged for a new or unused product.

(9) "Motor fuel" means any gasoline, diesel fuel, special fuel, petroleum distillate, refined petroleum product, natural petroleum liquid product, natural gas liquified product, crude oil product, or other substance or combination of substances which is intended to be or is capable of being used for the purpose of propelling or running any internal combustion engine of a motor vehicle and which is sold or used, alone or blended or compounded with other substances, by any person for such purpose.

(10) "Person" means any natural person, firm, association, business trust, trust, estate, partnership, corporation, 2 or more persons having a common or joint interest, or other legal or commercial entity. In the case of an entity, the term "person" shall also include any other entity which is a parent company of the entity; has, directly or indirectly, 30 per centum or more voting control over the entity; manages or effectively controls the entity, other than through a contractual relationship; or is under common control with the entity. In addition, in the case of an entity, the term "person" shall also include any other entity which is a subsidiary or affiliate of the entity; over which the entity has, directly or indirectly, 30 per centum or more voting control; or which is managed or effectively controlled by the entity, other than through a contractual relationship.

(11) "Petroleum product" means any oil, crude oil, residual fuel oil, grease, lubricant, petroleum distillate, refined petroleum product, natural petroleum product, natural gas product, crude oil product, or similar product, other than motor fuels, which is intended to be or is capable of being used with, in, or on a motor vehicle, whether or not such product is essential for the proper operation and maintenance of a motor vehicle and whether or not such product is also suitable or is actually sold or used for non-motor vehicle purposes.

(12) "Refiner, producer, or manufacturer" means any person who is engaged in the business of manufacturing, producing, refining, distilling, blending, or compounding motor fuels, petroleum products, or precursors of motor fuels or petroleum products, which are ultimately sold, supplied, or distributed to retail service stations in the District of Columbia by such person or any other person, whether or not such manufacturing, producing, refining,

distilling, blending, or compounding is performed by such person within the District of Columbia, or who is engaged in the business of importing motor fuels or petroleum products.

(13) “Retail dealer” means any person, other than an employee of a distributor, who owns, leases, operates, or otherwise controls a retail service station for the purpose of engaging in the retail sale of motor fuel and who also maintains a marketing agreement with a distributor.

(14) “Retail sale” means the sale of any tangible personal property to the public for any purpose other than for the resale of the property in the form in which it is sold or for the use or incorporation of the property sold as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining.

(15) “Retail service station” means any fixed geographic location, including the real estate and permanent improvements thereon, which is operated for the purpose of storing and selling motor fuel at retail and which has a dispensing system for delivery of motor fuel into the service tanks of motor vehicles, whether or not such location is also operated for the purposes of selling petroleum products, automotive products, or other products at retail or of repairing, maintaining, or servicing motor vehicles.

(16) “Selling, sell, or sale” means selling, offering for sale, keeping for sale, exposing for sale, advertising for sale, trafficking in, bartering, peddling, or any other transfer, exchange, or delivery in any manner or by any means other than purely gratuitously.

(17) “Trademark” means any trademark, tradename, service mark, brandname, or other identifying mark, symbol, or name, including any identifying mark, symbol, or name associated with any motor fuel.

(18) “Wholesaler” means any person, including any distributor, who is engaged in the business of selling, supplying, or distributing motor fuels or petroleum products to retail service stations in the District of Columbia.

(Apr. 19, 1977, D.C. Law 1-123, § 2, 24 DCR 2371; Apr. 8, 2005, D.C. Law 15-297, § 2(a), 52 DCR 1485.)

Section references. — This section is referred to in § 36-302.02.

Prior Codifications. — 1981 Ed., § 10-201. 1973 Ed., § 10-201.

Effect of amendments. — D.C. Law 15-297 added subsec. (6A).

Legislative history of Law 1-123. — Law 1-123, the “Retail Service Station Act of 1976,” was introduced in Council and assigned Bill No. 1-333, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Enacted without signature

by the Mayor on January 18, 1977, it was assigned Act No. 1-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-297. — Law 15-297, the “Retail Service Station Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-914, which was referred to the Committee on Public Interest. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on January 4, 2005, it was assigned Act No. 15-693 and transmitted to both Houses of Congress for its review. D.C. Law 15-297 became effective on April 8, 2005.

CASE NOTES

ANALYSIS

In general.
Marketing agreements.

In general.

Because the District of Columbia Retail Service Station Act seeks to effectuate broad remedial purposes, its provisions must be liberally construed in favor of independent retailers. D.C. Code 1981, § 10-241. *Dege v. Milford*, 574 A.2d 288, 1990 D.C. App. LEXIS 102 (1990).

Preemption provision of Petroleum Marketing Practices Act preempted only those provisions of District of Columbia Retail Service Station Act which addressed termination, nonrenewal, or notice required with respect to those practices; any provision regulating some other aspect of franchise relationship was pre-

empted under doctrine of implied preemption only insofar as it stood as obstacle to accomplishment and execution of full purposes and objectives of the federal Act. Petroleum Marketing Practices Act, § 106(a), 15 U.S.C. § 2806(a); D.C. Code 1981, §§ 10-201 to 10-242. *Davis v. Gulf Oil Corp.*, 485 A.2d 160, 1984 D.C. App. LEXIS 559 (1984).

Marketing agreements.

Purchase and sale agreement was a "marketing agreement," within meaning of term in Retail Service Station Act, where, as a condition of purchase of property, vendor agreed to supply motor fuel to purchaser, and purchaser was given the right to use vendor's trademark for purposes of engaging in the retail sale of motor fuel. *Kazemzadeh v. Eastern Petroleum Corp.*, 135 WLR 1873 (Super. Ct. 2007).

Subchapter II. Operation of Retail Service Stations.

§ 36-302.01. Registration of intent to sell.

(a) Notwithstanding anything contained in § 47-2814, all refiners, producers, manufacturers, marketers, wholesalers, distributors, suppliers, jobbers, resellers, retailers, retail dealers, or sellers of motor fuels, including any operator of a retail service station, shall, before selling, supplying, or distributing any motor fuels which may ultimately be used for the purpose of propelling or running any motor vehicle and annually thereafter by May 1, file with the Mayor a written declaration that they desire or intend to sell, supply, or distribute motor fuels in the District of Columbia. The declaration shall be filed on such form or forms and in such manner as may be prescribed by the Mayor and shall include, in addition to such other information as the Mayor shall require, a listing of the types and grades of the motor fuels and petroleum products that such person wishes or intends to sell, supply, or distribute; any trademark or trademarks associated therewith; a listing of the names and addresses of the suppliers thereof; a listing of the names and addresses of the persons to whom such motor fuels or petroleum products are or will be sold, supplied, or distributed; and a description, including the location, of any proposed or existing facilities and equipment such person will utilize in his business for all drive-in retail service stations, excluding car agencies, parking garages, and operations. This would include gas only self-service islands, gas only mixed service islands, gas only full service islands and gas with automotive repair services. It shall be a violation of this subchapter for any person to sell, supply, or distribute any motor fuel to any person in the District of Columbia, by himself or by his employee, servant, or agent, or as the employee, servant, or agent of any other person, or to have any motor fuel in his custody or possession with intent to sell, supply, or distribute such motor fuel, without having first filed a current valid declaration with the Mayor, provided that any person who is engaged in the business of selling, supplying, or distributing

motor fuel in the District of Columbia on April 19, 1977, may continue such business for not more than 30 days after April 19, 1977, without filing a declaration.

(b) Whenever a person intends to discontinue the business of selling, supplying, or distributing motor fuel in the District of Columbia, whether through a sale or transfer of the business or otherwise, such person shall notify the Mayor in writing of such discontinuance at least 10 days prior to the date that such discontinuance will take effect. Such notice shall give the date of the discontinuance, the reason for such discontinuance, and, in the event of a sale or transfer of the business, the effective date thereof and the name and address of the purchaser or transferee thereof.

(Apr. 19, 1977, D.C. Law 1-123, § 3-101, 24 DCR 2371; Dec. 29, 1979, D.C. Law 3-44, § 2(b), 26 DCR 2093.)

Section references. — This section is referred to in §§ 36-302.04 and 36-302.05.

Prior Codifications. — 1981 Ed., § 10-211. 1973 Ed., § 10-211.

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

Legislative history of Law 3-44. — Law 3-44, the “Moratorium on Retail Service Station

Conversion Act of 1979,” was introduced in Council and assigned Bill No. 3-152, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on September 25, 1979 and October 9, 1979, respectively. Signed by the Mayor on November 2, 1979, it was assigned Act No. 3-118 and transmitted to both Houses of Congress for its review.

§ 36-302.02. Restrictions on operation.

(a) After April 19, 1977, no producer, refiner, or manufacturer of motor fuels as the terms are defined in § 36-301(6A), (9), and (12), shall open a retail service station in the District of Columbia, irrespective of whether or not the retail service station will be operated under a trademark owned, leased, or otherwise controlled by the producer, refiner, or manufacturer, unless the retail service station is to be operated by a person or entity other than.

(1) An employee, servant, commissioned agent, or subsidiary of the producer, refiner, or manufacturer; or

(2) A person or entity who operates or manages the retail service station under a contract with the producer, refiner, or manufacturer which provides for a fee arrangement.

(b) After January 1, 1981, no producer, refiner, or manufacturer of motor fuels, as the terms are defined in § 36-301.01(6A), (9), and (12), shall operate a retail service station in the District of Columbia, irrespective of whether or not the retail service station will be operated under a trademark owned, leased, or otherwise controlled by the producer, refiner, or manufacturer; with employees, servants, commissioned agents, or subsidiaries of the producer, refiner, or manufacturer; or with a person or entity who operates or manages the retail service station under a contract with the producer, refiner, or manufacturer which provides for a fee arrangement; provided, that any entity, which, as of October 9, 1979, operates a retail service station in the District of Columbia, and of which a producer, refiner, or manufacturer, as defined in § 36-301.01(6A) and (12), only has no more than 49% voting control, may

continue to operate the station after January 1, 1981, so long as no producer, refiner or manufacturer, as defined in § 36-301.01(6A) and (12), only has more than 49% voting control of the entity.

(c) Repealed.

(Apr. 19, 1977, D.C. Law 1-123, § 3-102, 24 DCR 2371; Dec. 29, 1979, D.C. Law 3-44, § 2(a), 26 DCR 2093; Apr. 8, 2005, D.C. Law 15-297, § 2(b), 52 DCR 1485; Jan. 29, 2008, D.C. Law 17-80, § 2(a), 54 DCR 11883.)

Section references. — This section is referred to in §§ 36-302.04 and 36-302.05.

Prior Codifications. — 1981 Ed., § 10-212. 1973 Ed., § 10-212.

Effect of amendments. — D.C. Law 15-297 rewrote the section which had read:

“(a) After April 19, 1977, no producer, refiner, or manufacturer of motor fuels as the terms are defined in § 36-301.01(10) and (12) shall open a retail service station in the District of Columbia, irrespective of whether or not such retail service station will be operated under a trademark owned, leased, or otherwise controlled by such producer, refiner, or manufacturer, unless such retail service station is to be operated by a person or entity other than either an employee, servant, commissioned agent or subsidiary of such producer, refiner, or manufacturer or a person or entity who operates or manages such retail service station under a contract with such producer, refiner, or manufacturer which provides for a fee arrangement.

“(b) After January 1, 1981, no producer, refiner, or manufacturer of motor fuels as the terms are defined in § 36-301.01(10) and (12) shall operate a retail service station in the District of Columbia, irrespective of whether or not such retail service station will be operated under a trademark owned, leased, or otherwise controlled by such producer, refiner, or manufacturer, with employees, servants, commissioned agents, or subsidiaries of such producer, refiner, or manufacturer or with a person or entity who operates or manages such retail service station under a contract with such producer, refiner, or manufacturer which provides for a fee arrangement. However, any entity, which as of October 9, 1979, operates a retail service station in the District of Columbia, and of which a producer, refiner, or manufacturer as defined in § 36-301.01(12) only has no more than 49 per centum voting control, may continue to operate such station after January 1, 1981, so long as no producer, refiner or manufacturer as defined in § 36-301.01(12) only has

more than 49 per centum voting control of the entity.”

D.C. Law 17-80, in subsections. (a) and (b), deleted “jobbers,” preceding “producer”; and repealed subsec. (c) which had read as follows: “(c) Any jobber in violation of subsections (a) or (b) of this subsection as of April 8, 2005, shall have 2 years following April 8, 2005, to come into compliance.”

Temporary Amendment of Section. — Section 2 of D.C. Law 17-6 amended subsec. (c) to read as follows:

“(c) Any jobber in violation of subsections (a) or (b) of this subsection as of April 8, 2005, shall come into compliance by January 1, 2008.”

Section 4(a) of D.C. Law 17-6 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Retail Service Station Clarification Emergency Act of 2007 (D.C. Act 17-21, March 22, 2007, 54 DCR 2782).

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

Legislative history of Law 3-44. — For legislative history of D.C. Law 3-44, see Historical and Statutory Notes following § 36-302.02.

Legislative history of Law 15-297. — For Law 15-297, see notes following § 36-301.01.

Legislative history of Law 17-80. — Law 17-80, the “Retail Service Station Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-142 which was referred to the Committee of Public Services and Consumer Affairs. The Bill was adopted on first and second readings on October 2, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 26, 2007, it was assigned Act No. 17-191 and transmitted to both Houses of Congress for its review. D.C. Law 17-80 became effective on January 29, 2008.

§ 36-302.03. Nondiscrimination required of wholesalers.

(a) Every wholesaler shall extend all voluntary allowances, including, but not limited to, any temporary or permanent price reduction, price allowance,

price adjustment, special sale, deal, discount, inducement, incentive, rent rebate, rent abatement, rent relief, premium or other allowance, uniformly, on an equitable basis, to every retail service station served. In the event that an exceptional or undue hardship has been imposed on a specific retail service station by the occurrence or existence of special or unusual circumstances, including, but not limited to, loss by fire or a temporary road closing, a nonuniformly extended voluntary allowance may be extended to such retail service station.

(b) Every wholesaler shall apply all equipment rental charges for equipment of a comparable age, condition, grade, or quality uniformly, on an equitable basis, to every retail service station served.

(c) Every wholesaler shall, during periods of shortage affecting such wholesaler, apportion uniformly all motor fuels, including all grades of motor fuel, and all petroleum products affected by such shortage, on an equitable basis, to every retail service station served. No wholesaler shall unreasonably discriminate between retail service stations in their allotments. For the purpose of this subsection, a shortage shall exist when any wholesaler is unable or unwilling for any reason, on either a permanent or temporary basis, to sell, distribute, or supply any specific motor fuels or petroleum products to all retail service stations previously served in a quantity equivalent to that previously sold, distributed, or supplied to such retail service stations.

(Apr. 19, 1977, D.C. Law 1-123, § 3-103, 24 DCR 2371.)

Section references. — This section is referred to in § 36-302.05.

Prior Codifications. — 1981 Ed., § 10-213.
1973 Ed., § 10-213.

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

CASE NOTES

In general.

Allegations that regional supplier of motor fuel was charging service station owner a different rate than others in the same pricing area

supported a claim for discriminatory pricing practices in violation of Retail Service Station Act. *Kazemzadeh v. Eastern Petroleum Corp.*, 135 WLR 1873 (Super. Ct. 2007).

§ 36-302.04. Exemption from enforcement of § 36-302.02; regulations; reports.

(a) Upon finding that enforcement of § 36-302.02 would impose an exceptional or undue hardship upon any refiner, producer, or manufacturer as a result of the existence of special or unusual circumstances, the Mayor may grant permission to such producer, refiner, or manufacturer to temporarily operate a retail service station for a period of not longer than 90 days. Within 60 days following April 19, 1977, the Mayor shall promulgate rules and regulations specifying the special or unusual circumstances during which a producer, refiner, or manufacturer may temporarily operate a retail service station, including, but not limited to, the abandonment of a retail service station by a retail dealer, the termination of, cancellation of, or failure to renew a marketing agreement other than a wrongful or illegal termination, cancel-

lation, or failure to renew, and other emergencies. Any producer, refiner, or manufacturer who desires the permission provided for in this subsection shall submit a written request for such permission to the Mayor, on such form or forms and in such manner as may be prescribed by the Mayor, prior to operating any retail service station. Such request shall include a statement of the special or unusual circumstances that exist and of the exceptional or undue hardship which would result from the enforcement of § 36-302.02. Nothing contained in this subsection shall be construed as authorizing any producer, refiner, or manufacturer to operate any retail service station in violation of this subchapter during the pendency of a request for permission to temporarily operate such retail service station.

(b) The Mayor may grant an exemption of not longer than 1 year to the divorcement date specified in § 36-302.02(b) to any producer, refiner, or manufacturer who is unable, after reasonable effort, to either sell, transfer, or otherwise dispose of any retail service station which he owns, leases, or otherwise controls or enter into a satisfactory marketing agreement or lease with a qualified retail dealer or other person who is authorized to operate such retail service station under § 36-302.02.

(c) The Mayor is authorized to promulgate all other rules and regulations necessary for the proper implementation and enforcement of subchapters II and IV of this chapter.

(d) The Mayor may require any person subject to the provisions of § 36-302.01 to maintain such written records and to file with the Mayor written reports containing such information as the Mayor shall deem necessary for the proper implementation and enforcement of subchapters II and IV of this chapter.

(Apr. 19, 1977, D.C. Law 1-123, § 3-104, 24 DCR 2371.)

Section references. — This section is referred to in § 36-302.05.

Prior Codifications. — 1981 Ed., § 10-214. 1973 Ed., § 10-214.

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

Editor's notes. — Exemption from moratorium on conversion of full service retail service stations: Sun Refining & Marketing Co. (Sunoco) Station located at 2305 Pennsylvania Ave: See Mayor's Order 91-34, February 28, 1991.

§ 36-302.05. Violations; notice, order, injunction, and penalties.

(a) Whenever the Mayor has reason to believe that any person has violated or is violating any provision of subchapter II or IV of this chapter or the rules and regulations promulgated pursuant thereto, he shall cause written notice to be served upon such person in the manner provided by law. Such notice shall specify the provision or provisions that the Mayor has reason to believe that the person has violated or is violating and the ultimate facts or actions upon which the Mayor bases his belief. The Mayor shall also cause a written order to be served upon such person directing such person to immediately cease and desist from continuing such violation. If the person so ordered refuses or fails

to comply with such order, the Mayor shall be authorized to apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or permanent injunction restraining such person from continuing such violation. The court shall have jurisdiction to grant such temporary restraining order, preliminary injunction, permanent injunction, or other relief as may be appropriate under the circumstances.

(b) Any violation of any provision of subchapter II or IV of this chapter or the rules and regulations promulgated pursuant thereto, shall constitute a misdemeanor and shall, upon conviction thereof, be punishable by a fine of not more than \$1,000 or by imprisonment for not more than 90 days or both. In the event of any violation of any provision of subchapter II or IV of this chapter or the rules and regulations promulgated pursuant thereto, each and every day of such violation shall constitute a separate offense and the penalties provided for herein shall be applicable to each such separate offense.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter or § 36-304.01, or any rules or regulations issued under the authority of those sections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction shall be pursuant to Chapter 18 of Title 2.

(Apr. 19, 1977, D.C. Law 1-123, § 3-105, 24 DCR 2371; Oct. 5, 1985, D.C. Law 6-42, § 419, 32 DCR 4450; Apr. 8, 2005, D.C. Law 15-297, § 2(c), 52 DCR 1485.)

Prior Codifications. — 1981 Ed., § 10-215. 1973 Ed., § 10-215.

Effect of amendments. — D.C. Law 15-297, in subsec. (b), substituted “\$1,000” for “\$300”.

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs, Consumer and Regulatory Af-

fairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-297. — For Law 15-297, see notes following § 36-301.01.

Subchapter II-A. Security at Retail Service Stations.

§ 36-302.21. Security requirements for retail service stations.

(a) The operator of a retail service station shall install video surveillance equipment to monitor all pumps at the retail service station within 6 months after October 22, 2009. The Metropolitan Police Department shall review the surveillance video in the event of a crime committed at the station.

(b)(1) The operator of a retail service station shall display a warning sign at each pump and at the attendant’s duty station that warns:

- (A) Always remove the keys from a vehicle;
- (B) Lock all doors when exiting a vehicle; and
- (C) Premises under surveillance.

(2) The measurements for each sign shall exceed 8 inches by 8 inches.

(3) The text for each sign shall be in boldface and shall exceed a 36-point font.

(4) The text and background for each sign shall be in contrasting colors.

(Apr. 19, 1977 D.C. Law 1-123, § 3-121, as added Oct. 22, 2009, D.C. Law 18-65, § 2, 56 DCR 6606.)

Legislative history of Law 18-65. — Law 18-65, the “Enhanced Security at Gas Stations Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-95, which was referred to the Committee on Public Services and Consumer Affairs. The bill was adopted on

first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-161 and transmitted to both Houses of Congress for its review. D.C. Law 18-65 became effective on October 22, 2009.

§ 36-302.22. Retail service station security public service announcement.

Within 90 days after October 22, 2009, the Metropolitan Police Department shall produce a public service announcement video which will be available for broadcast on the cable television channels allocated to the District government and made accessible at the Metropolitan Police Department website warning consumers of the potential dangers at retail service stations.

(Apr. 19, 1977 D.C. Law 1-123, § 3-122, as added Oct. 22, 2009, D.C. Law 18-65, § 2, 56 DCR 6606.)

Legislative history of Law 18-65. — For Law 18-65, see notes following § 36-302.21.

Subchapter III. Marketing Agreements.

§ 36-303.01. Nonwaiverable conditions; conditions affecting marketing agreements.

(a) All marketing agreements shall be in writing and shall be subject to the nonwaiverable conditions set forth in this section, whether or not such conditions are expressly set forth in such marketing agreements. For the purposes of this section, the term “marketing agreement” shall also include any oral or written collateral or ancillary agreement. No marketing agreement shall:

(1) Require a retail dealer to keep his retail service station open for business for any specified number of hours per day, or days per week, or for any specified hours of the day, or days of the week, except as otherwise provided in § 36-303.03(c)(5);

(2) Require a retail dealer to purchase or accept delivery of, on consignment or otherwise, any products from the distributor other than such motor fuels and petroleum products as are specified in the marketing agreement;

(3) Fix, maintain, or establish, or grant to the distributor the right, privilege, or authority to fix, maintain, or establish, the prices at which the

retail dealer shall sell any motor fuels, petroleum products, or automotive products;

(4) Require the retail dealer to meet any sales quotas for any motor fuels, petroleum products, or automotive products;

(5) Prohibit a retail dealer from selling, assigning, or otherwise transferring his marketing agreement or any interest therein to another person;

(6) Prohibit a retail dealer from purchasing or accepting delivery of, on consignment or otherwise, any motor fuels, petroleum products, automotive products, or other products from any person who is not a party to the marketing agreement or prohibit a retail dealer from selling such motor fuels or products, provided that if the marketing agreement permits the retail dealer to use the distributor's trademark, the marketing agreement may require such motor fuels, petroleum products, and automotive products to be of a reasonably similar quality to those of the distributor, and provided further that the retail dealer shall neither represent such motor fuels or products as having been procured from the distributor nor sell such motor fuels or products under the distributor's trademark;

(7) Require a retail dealer to take part in any promotional or advertising campaign which will require the retail dealer to use, utilize, or accept any premiums, coupons, posters, stamps, tickets, gifts, bonuses, rebates, or other promotional items;

(8) Contain any provision which in any way limits the right of any party to such marketing agreement to a trial by jury or to the interposition of counter-claims or cross-claims;

(9) Contain any provision which requires the retail dealer to assent to any release, assignment, novation, waiver, or estoppel which would relieve any person from any liability imposed by this subchapter or would negate any rights granted to a retail dealer by this subchapter;

(10) Be for a term of less than 1 year; or

(11) Contain any term or condition which, directly or indirectly, violates this subchapter.

(b) Nothing contained within this section shall be construed as prohibiting a distributor from suggesting or advising the retail dealer of appropriate or reasonable hours of operation, days of operation, or prices, provided that the distributor shall in no way or manner attempt to threaten or coerce the retail dealer into following his suggestions or advice. Nothing contained within this section shall be construed as prohibiting a retail dealer from agreeing to purchase or accept delivery of other products or equipment from the distributor or from participating financially or otherwise in any promotional or advertising campaign sponsored by the distributor, provided that the distributor shall in no way or manner attempt to threaten or coerce such actions on the part of the retail dealer.

(Apr. 19, 1977, D.C. Law 1-123, § 4-201, 24 DCR 2371.)

Prior Codifications. — 1981 Ed., § 10-221.
1973 Ed., § 10-221.

Legislative history of Law 1-123. — For

legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

CASE NOTES

ANALYSIS

Deed restrictions.
In general.
Private cause of action.

Deed restrictions.

Deed restriction in purchase and sale agreement, precluding purchaser from buying motor fuel from anyone other than vendor's regional supplier, violated section of Retail Service Station Act prohibiting a franchisor's ability to force a franchisee to accept a contract with exclusive dealing requirements. *Kazemzadeh v. Eastern Petroleum Corp.*, 135 WLR 1873 (Super. Ct. 2007).

In general.

District of Columbia law requiring gas station franchise agreements to be in writing and for a minimum term of one year, did not change the prerequisites for a successful claim under the Petroleum Marketing Practices Act (PMPA). *Metrol, Inc. v. ExxonMobil Oil Corp.*, 724 F.Supp.2d 70, 2010 U.S. Dist. LEXIS 72562 (2010), affirmed by 672 F.3d 1108, 400 U.S. App. D.C. 43, 2012 U.S. App. LEXIS 5712 (2012).

Franchisor's right of first refusal in gasoline service station franchise violated proscription of the District of Columbia Retail Service Station Act against franchise agreement conditions which prevent an independent retailer from transferring his marketing agreement to another person, where right of first refusal was part of form agreement, and where franchisee had elected not to sell rather than to sell to someone other than original prospective buyer. D.C. Code 1981, § 10-221(a)(5, 11). *Dege v. Milford*, 574 A.2d 288, 1990 D.C. App. LEXIS 102 (1990).

Provision of District of Columbia Retail Service Station Act establishing one year mini-

mum lease term for franchises was not preempted by Petroleum Marketing Practices Act. Petroleum Marketing Practices Act, § 106(a), 15 U.S.C. § 2806(a); D.C. Code 1981, § 10-221(a)(10). *Davis v. Gulf Oil Corp.*, 485 A.2d 160, 1984 D.C. App. LEXIS 559 (1984).

Where franchisor gave notice of nonrenewal required by Petroleum Marketing Practices Act before date on which franchise expired, with nonrenewal not taking effect until date after conclusion of the term, resulting extension of the term was facially a periodic tendency that could not be reformed or specifically enforced as automatic one year lease renewal at original expiration date under provision in District of Columbia Retail Service Station Act establishing minimum one year lease term. Petroleum Marketing Practices Act, § 104(a)(2), 15 U.S.C. § 2804(a)(2); D.C. Code 1981, § 10-221(a)(10). *Davis v. Gulf Oil Corp.*, 485 A.2d 160, 1984 D.C. App. LEXIS 559 (1984).

Provision of Retail Service Station Act prohibiting a franchisor's ability to force a franchisee to accept a contract that includes exclusive dealing requirements was not preempted by federal Petroleum Marketing Practices Act. *Kazemzadeh v. Eastern Petroleum Corp.*, 135 WLR 1873 (Super. Ct. 2007).

Private cause of action.

Private cause of action existed for violation of section of Retail Service Station Act prohibiting a franchisor's ability to force a franchisee to accept a contract with exclusive dealing requirements. *Kazemzadeh v. Eastern Petroleum Corp.*, 135 WLR 1873 (Super. Ct. 2007).

Private cause of action existed for violation of section of Retail Service Station Act requiring wholesalers to extend voluntary allowances on an equitable basis to every retail station served. *Kazemzadeh v. Eastern Petroleum Corp.*, 135 WLR 1873 (Super. Ct. 2007).

§ 36-303.02. Disclosures to prospective retail dealers.

Prior to entering into any marketing agreement with any prospective retail dealer, a distributor shall disclose the information set forth in this section to such prospective retail dealer in writing. Prior to transferring any marketing agreement or interest therein to any prospective transferee, a retail dealer shall disclose the information set forth in this section to such prospective transferee in writing:

(1) The name and last known address of the previous retail dealer or dealers for the immediately prior 3-year period or for the entire period during which the distributor has either sold or distributed motor fuels or petroleum products to or through such retail service station location or owned, leased, or otherwise controlled such location, whichever period is shorter, and the

grounds or reasons for the termination of, cancellation of, or failure to renew each marketing agreement with such previous retail dealer or dealers; and

(2) The existence of any present commitments, negotiations, or plans for the future sale, demolition, or other disposition of such location.

(Apr. 19, 1977, D.C. Law 1-123, § 4-202, 24 DCR 2371.)

Section references. — This section is referred to in § 36-303.06.

Prior Codifications. — 1981 Ed., § 10-222. 1973 Ed., § 10-222.

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

§ 36-303.03. Termination, cancellation, and failure to renew.

(a)(1) A retail dealer shall have the right to terminate or repudiate any marketing agreement to which he is a party for any reason, without the imposition of any damages or penalties and without any recourse by the distributor for such termination or repudiation, within 7 days, not including Saturdays, Sundays, or holidays, after the day on which performance of such marketing agreement commences. For purposes of this subsection, the term “marketing agreement” shall not include any renewal, extension, modification, amendment, or novation of an existing marketing agreement. For purposes of this subsection, the term “performance” shall mean the granting of a present right, privilege, or authority to use a trademark, the granting of a present right, privilege, or authority to occupy a retail service station, or the actual delivery of any motor fuels, petroleum products, or automotive products to the retail dealer. In order to exercise his right to terminate or repudiate a marketing agreement pursuant to this subsection, the retail dealer shall:

(A) Mail written notice, by registered or certified mail, to the distributor of his intention to exercise his right under this subsection within the period specified in this subsection;

(B) Discontinue use of any trademark presently being used by such retail dealer pursuant to the marketing agreement;

(C) Deliver or tender, so far as is practical, to the distributor all money, equipment, and merchantable products, including all motor fuels, petroleum products, and automotive products which the retail dealer has not presently sold, which have been loaned, sold, or delivered to the retail dealer pursuant to the marketing agreement within 10 days after mailing the notice specified in this subsection; and

(D) Deliver or tender to the distributor full possession of any retail service station provided by the distributor pursuant to the marketing agreement within 10 days after mailing the notice specified in this subsection.

(2) The retail dealer shall receive full credit, or the cash equivalent, for all money, equipment, and merchantable products delivered to the distributor pursuant to subparagraph (C) of paragraph (1) of this subsection. Nothing contained within this subsection shall be construed as granting a similar right to terminate or repudiate to the distributor under a marketing agreement or as prohibiting the retail dealer from cancelling a marketing agreement during the period specified in this subsection.

(b)(1) No retail dealer or distributor, except as otherwise provided in subsection (a) of this section, shall terminate, cancel, or fail to renew a marketing agreement unless he furnishes prior written notice to the other party. Such notice shall be sent to the other party by registered or certified mail not less than 90 days prior to the date on which the marketing agreement is to be terminated, cancelled, or not renewed, unless a shorter period is provided for in this subsection. Such notice shall contain a statement of the party's intention to terminate, cancel, or fail to renew the marketing agreement, the date on which such action shall become effective, and a statement of the specific grounds for such action. No distributor shall terminate, cancel, or fail to renew a marketing agreement, or notify a retail dealer of his intention to take such action, unless he reasonably and in good faith believes that the facts and circumstances existing do, in fact, justify his reliance on the grounds specified in his notice of intention to take such action. Notice furnished pursuant to this subsection shall be effective on the date of the mailing.

(2) In the event that a termination or cancellation is based upon 1 or more of the grounds specified in paragraphs (1) through (4) and (10) through (17) of subsection (c) of this section, the 90 days advance notice shall not be required. However, in such an event, the distributor shall furnish written notice to the retail dealer as far in advance of the effective date of such termination or cancellation as is reasonably practical under the circumstances.

(3) The distributor's failure to furnish prior written notice, as required by this subsection, of his intention not to renew a marketing agreement, whether or not such marketing agreement provides for automatic extension or renewal, shall constitute a renewal of the marketing agreement for a term of 1 year from its stated expiration date.

(c) No distributor shall terminate or cancel any marketing agreement with a retail dealer, either directly or indirectly, unless such termination or cancellation is based upon 1 or more of the grounds specified in this subsection. No distributor shall terminate or cancel any marketing agreement with a retail dealer unless the grounds for such termination or cancellation are expressly set forth in the marketing agreement:

(1) The retail dealer has failed to pay financial obligations due to the distributor under the marketing agreement, including, but not limited to, rents for any equipment or retail service station provided by the distributor and payments for any motor fuels, petroleum products, or automotive products delivered, on consignment or otherwise, to the retail dealer by the distributor pursuant to the marketing agreement, within the time and in the manner prescribed by the marketing agreement;

(2) The retail dealer has filed for or has been declared bankrupt, has petitioned for or has been declared insolvent, or has petitioned for a reorganization or credit arrangement under the applicable laws;

(3) A termination or dissolution of the partnership, corporation, or other entity operating the retail service station or the death of the retail dealer, provided that a termination or dissolution of a partnership or other entity shall not constitute a ground for the termination or cancellation of a marketing agreement where the remaining partners or individual members of the other

entity have notified the distributor of their intention to operate the retail service station and to acquire the interests of the departing partners or members pursuant to § 36-303.05(a) to (d);

(4) The retail dealer has voluntarily abandoned, or has given notice of his intention to voluntarily abandon, his retail service station, other than pursuant to subsection (a) of this section or § 36-303.05;

(5) The retail dealer has unjustifiably left his retail service station vacant or unattended for an unreasonable period of time or has unjustifiably failed to open his retail service station for business for an unreasonable number of days during any calendar year. The period of time and number of days which shall be deemed unreasonable shall be expressly set forth in the marketing agreement, but in no event may such period of time be less than 9 consecutive days or such number of days be less than 18 days during any calendar year;

(6) The retail dealer, or some other person over whom the retail dealer has control and was grossly negligent in not exercising such control, has wilfully or maliciously destroyed or damaged the real or personal property, including any equipment that is used in the operation of the retail service station, of the distributor furnished pursuant to the marketing agreement and the retail dealer has refused to replace or repair such real or personal property;

(7) The retail dealer, or some other person over whom the retail dealer has control and was grossly negligent in not exercising such control, has deliberately adulterated, commingled, misbranded, mislabeled, or misrepresented to his customers any motor fuels, petroleum products, or automotive products delivered to the retail dealer by the distributor pursuant to the marketing agreement in a manner prohibited by the marketing agreement or by federal or District of Columbia law or contrary to customary practices in the retail service station industry;

(8) The retail dealer has made materially false, deceptive, or misleading representations to the distributor which are related to the operation of his retail service station business;

(9) The retail dealer has failed to comply with any federal or District of Columbia laws, rules, or regulations relating to the operation of a retail service station, including, but not limited to, laws, rules, or regulations relating to the payment of taxes and the maintenance of any necessary licenses, permits, or registrations, which the marketing agreement made the retail dealer responsible for complying with, and such failure to comply with such laws, rules, or regulations has or will adversely affect the business relationship between the retail dealer and the distributor or the business of the distributor;

(10) The retail dealer has been convicted of the commission or attempt to commit a felony, criminal misconduct or violations of law involving moral turpitude, fraud, or commercial dishonesty, which is related to the operation of his retail service station business and which would affect the ability of the retail dealer to operate his retail service station business or would tend to defame or seriously damage the reputation of the distributor or his trademark, provided that this subsection shall not apply to convictions that have been disclosed to the distributor by the retail dealer prior to entering into the marketing agreement;

(11) The condemnation, appropriation, or other public taking of the retail service station location covered by the marketing agreement, in whole or part, pursuant to the power of eminent domain or the loss of or damage to the retail service station facility by an act of God, to the extent that such taking or damage makes the continued operation of the retail service station completely unfeasible;

(12) The marketing agreement grants the retail dealer the right, privilege, or authority to occupy a retail service station leased by the distributor from another person and such lease is terminated, cancelled, or not renewed by such other person for a cause beyond the reasonable control of the distributor;

(13) The distributor has lost his legal right, for a cause beyond his reasonable control, to grant the retail dealer the right, privilege, or authority to use any trademark provided for in the marketing agreement;

(14) The retail dealer has so severe a physical or mental disability that he is rendered incapable of operating his retail service station for an unreasonable period of time and has been unable to provide for the continued operation of his retail service station by another person;

(15) The retail dealer has failed to substantially comply with any other essential and reasonable requirement, condition, or provision expressly set forth in the marketing agreement;

(16) The existence or occurrence of any cause or circumstance which would make termination or cancellation of the marketing agreement reasonable, just, and equitable in light of the facts and circumstances then existing; or

(17) The retail dealer and the distributor have executed a mutual agreement to terminate the marketing agreement in writing.

(d) No distributor shall fail to renew a marketing agreement with a retail dealer, either directly or indirectly, unless such failure to renew is based upon 1 or more of the grounds specified in this subsection. No distributor shall fail to renew a marketing agreement unless the grounds for such failure to renew are expressly set forth in the marketing agreement:

(1) The existence of any of the grounds which would justify the termination or cancellation of a marketing agreement pursuant to subsection (c) of this section;

(2) The distributor intends to and does in fact withdraw entirely, within 1 year of the effective date of the notice furnished pursuant to subsection (b) of this section, from the sale in the District of Columbia of motor fuels, petroleum products, and automotive products;

(3) The marketing agreement grants the retail dealer the right, privilege, or authority to occupy a retail service station owned, leased, or otherwise controlled by the distributor and the distributor intends to and does in fact withdraw entirely, within 1 year of the effective date of the notice furnished pursuant to subsection (b) of this section, from the business of owning, leasing, controlling, and operating retail service stations in the District of Columbia;

(4) The marketing agreement grants the retail dealer the right, privilege, or authority to occupy a retail service station owned, leased, or otherwise controlled by the distributor and the distributor intends to sell or lease the

retail service station location to a person other than a subsidiary, parent, affiliate, or other entity controlled or managed by the distributor or controlling or managing the distributor, for a purpose other than the retail sale of motor fuels or intends to relinquish a leasehold interest in the retail service station location, without any intention of purchasing, executing a new lease for, or otherwise regaining control of the location;

(5) A failure on the part of the distributor and the retail dealer, both parties having acted in good faith in trying to effect a renewal, to agree to any reasonable and essential changes in or additions to the marketing agreement considering the then existing facts and circumstances;

(6) The retail dealer has failed to make reasonable repairs and maintenance to the real or personal property of the distributor furnished pursuant to the marketing agreement provided that the marketing agreement requires the retail dealer to assume such responsibility for repair and maintenance;

(7) The retail dealer has failed to substantially comply with any reasonable minimum standards for the operation of a retail service station which are expressly set forth in the marketing agreement, including, but not limited to, standards concerning the cleanliness and appearance of the retail service station and the safeness of facilities and services, within a reasonable time after receiving written notice of noncompliance and such failure to comply will damage the integrity of the distributor's trademark or the reputation of either the distributor or other retail service stations operating under the distributor's trademark; or

(8) The distributor has received substantiated repeated customer complaints concerning the conduct or practices of the retail dealer, including, but not limited to, repair or maintenance work of a substandard quality, obnoxious or disrespectful behavior towards customers, or dishonest, unethical, or fraudulent practices, and the continuance of such conduct or practices will damage the integrity of the distributor's trademark or the reputation of either the distributor or other retail service stations operating under the distributor's trademark.

(e)(1) No distributor shall terminate, cancel, or fail to renew any marketing agreement, either directly or indirectly, for any of the following reasons:

(A) Refusal of the retail dealer to accept a renewal of a marketing agreement for a term of less than 1 year;

(B) Refusal of the retail dealer to take part in any promotional or advertising campaign, to meet sales quotas suggested by the distributor, to purchase or accept delivery of any motor fuels or petroleum products not specified in the marketing agreement, or any other products or equipment, to sell motor fuels, petroleum products, or automotive products at a price suggested by the distributor, or to comply with any standard of performance imposed upon such retail dealer by the distributor which exceeds the standards of performance imposed by the marketing agreement;

(C) Refusal of the retail dealer to keep his retail service station open and operating during those hours or days which, in the reasonable opinion of the retail dealer, are unprofitable or to follow the suggestions or advice of the distributor concerning days or hours of operation;

(D) The retail dealer's attempt to exercise his right to sell, assign, or otherwise transfer his marketing agreement or any interest therein to another person; or

(E) The distributor's desire to obtain possession of a retail service station currently leased to the retail dealer in order to engage in the retail sale of motor fuel on its own behalf.

(2) No marketing agreement shall specify any of the reasons contained in this subsection as grounds for the termination of, cancellation of, or failure to renew such marketing agreement by the distributor.

(Apr. 19, 1977, D.C. Law 1-123, § 4-203, 24 DCR 2371; Apr. 24, 2007, D.C. Law 16-305, § 51, 53 DCR 6198.)

Section references. — This section is referred to in §§ 36-303.01 and 36-303.04.

Prior Codifications. — 1981 Ed., § 10-223. 1973 Ed., § 10-223.

Effect of amendments. — D.C. Law 16-305, in subsec. (c)(14), deleted "been afflicted with" following "retail dealer has".

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

Legislative history of Law 16-305. — Law 16-305, the "People First Respectful Language Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

CASE NOTES

ANALYSIS

Construction with other laws.
In general.

Construction with other laws.

Owner of franchise business, which occupied land taken by the District of Columbia under its eminent domain power for public use, was not entitled to compensation for business losses, goodwill, and other such consequential damages, under the Fifth Amendment; in accordance with owner's franchise agreement, franchisor terminated his lease prior to the date of condemnation, and hence he no longer had a leasehold interest, and the District's condemnation law did not authorize recovery of business loss or goodwill. *Mamo v. District of Columbia*, 934 A.2d 376, 2007 D.C. App. LEXIS 591 (2007), writ of certiorari denied by 552 U.S. 1259, 128 S. Ct. 1670, 170 L. Ed. 2d 357, 2008 U.S. LEXIS 2494, 76 U.S.L.W. 3497 (2008).

In general.

Franchisor's right of first refusal in gasoline service station franchise violated proscription of the District of Columbia Retail Service Sta-

tion Act against franchise agreement conditions which prevent an independent retailer from transferring his marketing agreement to another person, where right of first refusal was part of form agreement, and where franchisee had elected not to sell rather than to sell to someone other than original prospective buyer. D.C. Code 1981, § 10-221(a)(5, 11). *Dege v. Milford*, 574 A.2d 288, 1990 D.C. App. LEXIS 102 (1990).

Because the District of Columbia Retail Service Station Act seeks to effectuate broad remedial purposes, its provisions must be liberally construed in favor of independent retailers. D.C. Code 1981, § 10-241. *Dege v. Milford*, 574 A.2d 288, 1990 D.C. App. LEXIS 102 (1990).

Provision of District of Columbia Retail Service Station Act setting forth 90-day notice requirement governing franchisor's attempt to terminate, cancel, or fail to renew a franchise and specifying remedy for violation of the notice requirement was preempted by notice requirements of Petroleum Marketing Practices Act. *Petroleum Marketing Practices Act*, § 106(a), 15 U.S.C. § 2806(a); D.C. Code 1981, § 10-223(b)(1, 3). *Davis v. Gulf Oil Corp.*, 485 A.2d 160, 1984 D.C. App. LEXIS 559 (1984).

§ 36-303.04. Retail dealer's remedies.

(a) The remedies provided for in this section are in addition to any and all

other remedies available to the retail dealer under this subchapter, the marketing agreement, any other statute or act, or law or equity.

(b) In the event of any termination of, cancellation of, or failure to renew a marketing agreement, whether by the unilateral action of either the retail dealer or the distributor, by mutual agreement, by the death of the retail dealer, or otherwise, the distributor shall make or cause to be made an offer in good faith to repurchase from the retail dealer or his legal representative within 30 days after the effective date of such termination, cancellation, or nonrenewal, any and all merchantable products, including, but not limited to, any motor fuels, petroleum products, and automotive products, at the full price originally paid or at the then current wholesale price, whichever price shall be lower, and any and all equipment, including any equipment which has been affixed or appended, after April 19, 1977, with the permission of the distributor, to a retail service station leased from the distributor, at the current fair market value, which have been purchased by the retail dealer from the distributor and which have been tendered, to the extent that such tender may be practical, by the retail dealer or his legal representative to the distributor. If the distributor does not make or cause to be made a good faith offer to repurchase the retail dealer's products and equipment within the 30-day period provided for in this subsection, the retail dealer or his legal representative may sell the products and equipment for as reasonable a price as may be obtained, may apply the balance owed by the distributor against any existing indebtedness owed by the retail dealer to the distributor, and shall have a cause of action against the distributor for the difference. In the event that the distributor repurchases the retail dealer's products and equipment the distributor shall have the right to first apply the value of the products and equipment being repurchased against any existing indebtedness owed directly to the distributor by the retail dealer. The distributor's obligation to repurchase shall be enforceable only to the extent that there are no other valid claims or liens against such products or equipment by or on behalf of other creditors of the retail dealer.

(c) Equipment purchased or otherwise acquired by the retail dealer and affixed or appended, after April 19, 1977, with the permission of the lessor, to a retail service station leased by the retail dealer shall remain the property of the retail dealer, notwithstanding the fact that it is permanently affixed or the existence of any contrary provisions in a marketing agreement, other agreement, or law. Upon the termination of, cancellation of, or failure to renew a lease or other agreement or the termination of, cancellation of, or failure to renew a marketing agreement, the retail dealer or his legal representative shall have a reasonable time in which to remove such equipment. In removing such equipment, the retail dealer or his legal representative shall leave the retail service station premises in substantially the same condition as they were at the time the equipment was affixed or appended.

(d) If the distributor terminates, cancels, or fails to renew a marketing agreement for any of the grounds specified in § 36-303.03(c)(2), (3), (11), or (14) and § 36-303.03(d)(2), (3), or (4) or for any cause or circumstance allowed under § 36-303.03(c)(16) which involves the retail dealer's failure to comply

with the marketing agreement or which was not beyond the reasonable control of the distributor to prevent, the distributor shall pay to the retail dealer, within 30 days of the effective date of the termination, cancellation, or failure to renew, the full value of any business goodwill enjoyed by the dealer on the effective date of the notice furnished pursuant to § 36-303.03(b).

(Apr. 19, 1977, D.C. Law 1-123, § 4-204, 24 DCR 2371.)

Section references. — This section is referred to in § 36-303.06.

Prior Codifications. — 1981 Ed., § 10-224. 1973 Ed., § 10-224.

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

§ 36-303.05. Sale, assignment, or other transfer of a marketing agreement.

(a) No distributor shall unreasonably withhold his approval of any sale, assignment, or other transfer, including any transfer of the retail dealer's right, privilege, or authority to occupy a retail service station pursuant to a marketing agreement, of a marketing agreement or any interest therein to another person by a retail dealer.

(b) No retail dealer shall sell, assign, or otherwise transfer a marketing agreement or any interest therein unless he furnishes prior written notice to the distributor of his intention to make such sale, assignment, or other transfer. Such notice shall be sent to the distributor by registered or certified mail and shall include the prospective transferee's name and address, a statement of the prospective transferee's financial qualifications, a statement of the prospective transferee's business experience during the previous 5 years, and a statement of the prospective transferee's ability, character, and credit history.

(c) The distributor shall either approve or disapprove such sale, assignment, or other transfer in writing within 60 days after receipt of the notice specified in subsection (b) of this section. A distributor's failure to notify the retail dealer of his approval or disapproval shall be construed as an approval of the proposed sale, assignment, or other transfer.

(d) In order for a sale, assignment, or other transfer of a marketing agreement to be valid, the prospective transferee shall agree in writing to comply with all valid requirements, conditions, and provisions of the existing marketing agreement which may be applicable.

(e)(1) A prospective transferee shall have the right to terminate or repudiate any sale, assignment, or other transfer of a marketing agreement or any interest therein for any reason, without the imposition of any damages or penalties for such action and without any recourse by the transferor or distributor for such action, within 7 days, not including Saturdays, Sundays, or holidays, after the day on which the sale, assignment, or other transfer is consummated. In order to exercise his right under this subsection, the transferee shall:

(A) Mail written notice, by registered or certified mail, to the transferor and the distributor of his intention to exercise his right under this subsection within the period specified in this subsection;

(B) Discontinue use of any trademark presently being used by such transferee pursuant to the marketing agreement;

(C) Deliver or tender, so far as is practical, to the transferor or distributor, as appropriate, all money, equipment, and merchantable products which have been loaned, sold or delivered to the transferee by either the transferor or the distributor and which the transferee has not already sold, within 10 days after mailing the notice specified in this subsection; and

(D) Deliver or tender to the transferor full possession of any retail service station transferred to the transferee within 10 days after mailing the notice specified in this subsection.

(2) The transferee shall receive full credit, or the cash equivalent, for all money, equipment, and merchantable products delivered or tendered to the transferor or distributor, as appropriate, pursuant to subparagraph (C) of paragraph (1) of this subsection. Nothing contained within this subsection shall be construed as granting a similar right to terminate or repudiate to either the transferor or the distributor.

(f)(1) Upon the death or retirement of a retail dealer, the distributor shall grant a 1-year trial marketing agreement in the name of a successor who has been designated by the retail dealer and approved by the distributor. The designated successors shall be limited to a retail dealer's spouse, adult children, adult stepchildren, and the approval of the designated successor by the distributor shall not be unreasonably withheld.

(2) In order for the requirement in paragraph (1) of this subsection to be effective, the retail dealer shall have provided written notice to the distributor designating the successor dealer. The distributor shall approve or disapprove the designated successor, in writing, within 60 days after receipt of the written designation notice. A distributor's failure to notify a retail dealer of the approval or disapproval of any designated successor shall be construed as an approval of the designated successor.

(3) A 1-year trial marketing agreement shall contain the same terms and conditions as were contained in the marketing agreement in effect prior to the retail dealer's death or retirement. Pursuant to the provisions of this subchapter, a successor dealer, with the approval of the distributor, may sell, assign, or otherwise transfer the trial marketing agreement granted under paragraph (1) of this subsection.

(Apr. 19, 1977, D.C. Law 1-123, § 4-205, 24 DCR 2371; Feb. 9, 1984, D.C. Law 5-45, § 2, 30 DCR 5635.)

Cross references. — General powers of personal representatives, see § 20-741.

Section references. — This section is referred to in § 36-303.03.

Prior Codifications. — 1981 Ed., § 10-225. 1973 Ed., § 10-225.

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

Legislative history of Law 5-45. — Law

5-45, the "Successor in Interest to a Gasoline Products Marketing Agreement Act of 1983," was introduced in Council and assigned Bill No. 5-12, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on September 20, 1983 and October 4, 1983, respectively. Signed by the Mayor on October 21, 1983, it was assigned Act No. 5-71 and transmitted to both Houses of Congress for its review.

CASE NOTES

In general.

Because the District of Columbia Retail Service Station Act seeks to effectuate broad remedial purposes, its provisions must be liberally construed in favor of independent retailers. D.C. Code 1981, § 10-241. *Dege v. Milford*, 574 A.2d 288, 1990 D.C. App. LEXIS 102 (1990).

Franchisor's right of first refusal in gasoline service station franchise violated proscription of the District of Columbia Retail Service Sta-

tion Act against franchise agreement conditions which prevent an independent retailer from transferring his marketing agreement to another person, where right of first refusal was part of form agreement, and where franchisee had elected not to sell rather than to sell to someone other than original prospective buyer. D.C. Code 1981, § 10-221(a)(5, 11). *Dege v. Milford*, 574 A.2d 288, 1990 D.C. App. LEXIS 102 (1990).

§ 36-303.06. Civil actions.

(a)(1) In addition to any and all other remedies available to the retail dealer under this subchapter, the marketing agreement, any other statute or act, or law or equity, a retail dealer may maintain a civil action against a distributor for:

(A) Failure to make such disclosures as are required by § 36-303.02;

(B) Failure to repurchase as required by § 36-303.04(b);

(C) Failure to pay the full value of any business goodwill as required by § 36-303.04(d);

(D) Wrongful or illegal cancellation of, termination of, or failure to renew a marketing agreement with the retail dealer under § 36-303.03;

(E) Unreasonably withholding approval of a proposed sale, assignment, or other transfer of the marketing agreement.

(2) The court may award actual damages, including ascertainable loss of goodwill as provided for in § 36-303.04(d), sustained by the retail dealer as a result of the distributor's violation of this subchapter and may also grant such other legal or equitable relief as may be appropriate, including, but not limited to, declaratory judgment, specific performance, and injunctive relief.

(3) The court may, unless the action was frivolous, direct that costs of the action, including reasonable attorney and expert witness fees, be paid by the distributor. If the court finds that the distributor's wrongful or illegal termination of, cancellation of, or failure to renew the marketing agreement was wilful or intentional, the court may also award the retail dealer ascertainable loss of goodwill and punitive damages.

(b) No prospective transferee shall have a cause of action against a distributor as a result of the distributor's disapproval of a proposed sale, assignment, or other transfer of a marketing agreement.

(c) A civil action brought by a retail dealer against a distributor pursuant to this section shall be commenced within 2 years after such cause of action arose.

(Apr. 19, 1977, D.C. Law 1-123, § 4-206, 24 DCR 2371.)

Prior Codifications. — 1981 Ed., § 10-226. 1973 Ed., § 10-226.

Legislative history of Law 1-123. — For

legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

CASE NOTES

In general.

Because the District of Columbia Retail Service Station Act seeks to effectuate broad remedial purposes, its provisions must be liberally construed in favor of independent retailers. D.C. Code 1981, § 10-241. *Dege v. Milford*, 574 A.2d 288, 1990 D.C. App. LEXIS 102 (1990).

Private cause of action existed for violation of section of Retail Service Station Act prohibiting a franchisor's ability to force a franchisee to accept a contract with exclusive dealing requirements. *Kazemzadeh v. Eastern Petroleum Corp.*, 135 WLR 1873 (Super. Ct. 2007).

Private cause of action existed for violation of section of Retail Service Station Act requiring wholesalers to extend voluntary allowances on an equitable basis to every retail station served. *Kazemzadeh v. Eastern Petroleum Corp.*, 135 WLR 1873 (Super. Ct. 2007).

Retail Service Station Act's two-year statute of limitations did not preclude cause of action for continuing violations arising from illegal deed restrictions in purchase and sale agreement. *Kazemzadeh v. Eastern Petroleum Corp.*, 135 WLR 1873 (Super. Ct. 2007).

§ 36-303.07. Application of subchapter.

(a) This subchapter shall only apply to that portion of a marketing agreement which concerns the operation of a retail service station which is located within the District of Columbia and only to the extent of the business conducted by a retail dealer within the District of Columbia.

(b) This subchapter shall apply to any and all marketing agreements entered into after April 19, 1977. The term "entered into" shall include any renewal, extension, modification, amendment, or novation of a preexisting marketing agreement.

(c) This subchapter shall also apply to any failure to renew a preexisting marketing agreement.

(Apr. 19, 1977, D.C. Law 1-123, § 4-207, 24 DCR 2371.)

Prior Codifications. — 1981 Ed., § 10-227. 1973 Ed., § 10-227.

Legislative history of Law 1-123. — For

legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

Subchapter IV. Moratorium on Conversions to Limited Service Retail Service Stations.

§ 36-304.01. Prohibition on conversions.

(a) For the purposes of this section, the term "full service retail service station" means any retail service station location which provides a garage, service bay, work area, or similar enclosed area for repairing, maintaining, servicing, or otherwise working on motor vehicles, or any service islands. Such repair, maintenance, and service work may include, but is not limited to, the installation or replacement of batteries, tires, fan belts, lights, brakes, water pumps, mufflers and other parts and accessories and the performance of motor oil changes, lubrications, wheel alignments, tune-ups, tire repairs, brake adjustments, and general repair and maintenance work and services.

(b) No retail service station which is operated as a full service retail service station on or after April 19, 1977, may be structurally altered, modified, or otherwise converted, irrespective of the type or magnitude of the alteration, modification, or conversion, including, but not limited to, any alteration,

modification, or conversion which has the effect of merely obstructing access to an existing garage, service bay, work area, or similar enclosed area by any motor vehicle which was previously accommodated, into a nonfull service facility.

(c) No person who is an operator of any full service retail service station on or after April 19, 1977, including any person who is a subsequent operator of any such retail service station, or who, in any manner, controls the operation of any such retail service station, shall substantially reduce the number, types, quantity, or quality of the repair, maintenance, and other services, including the retail sale of motor fuels, petroleum products, and automotive products, previously offered. Such operators shall maintain the retail service station's existing garages, service bays, work areas, and similar areas in a fully operational condition and reasonably equipped to perform repair, maintenance, and service work on motor vehicles, including the provision of a qualified individual or individuals who is or are capable of performing repair, maintenance, and service work on motor vehicles during a reasonable number of hours per day and of days per week. This subsection shall not be construed as prohibiting any person who operates or controls a full service retail service station from discontinuing the retail sale of motor fuels at such retail service station, provided that less than 20% of such retail service station's gross revenue derived from the retail sale of motor fuels, petroleum products, and automotive products and from the repair, maintenance, and servicing of motor vehicles is derived from the retail sale of motor fuels, and provided further that such discontinuance of the retail sale of motor fuels shall not authorize any other substantial reduction in repair, maintenance, or other services previously offered. This subsection shall not be construed as prohibiting a full service retail service station from selling motor fuels on a self-service basis, provided that such retail service station continues to sell motor fuels on a nonself-service basis.

(d)(1) Based on the recommendation of the Gas Station Advisory Board ("Board") established pursuant to subsection (e) of this section, the Mayor may grant exemptions to the prohibitions contained in subsections (b) and (c) of this section. A petition for exemption shall be filed with the Board by both a distributor and a retail dealer ("petitioners"). The exemption may be granted if the petitioners submit plans and certify that the station will be improved in the following ways:

(A) By improving or increasing the lighting of the facility (to a reasonable level);

(B) By improving customer accessibility to the gasoline dispensers; and

(C) By improving customer conveniences including separate restroom facilities for men and women, a working air hose for automobile and bicycle tires, and water for windshield cleaning equipment.

(2)(A) Before recommending approval for exemption, the Board shall find the following:

(i) That the operator of the full service retail service station is experiencing extreme financial hardship; and

(ii) The existence of another full service retail service station within one mile of the station which provides equivalent service facilities.

(B) In addition to the requirements in subparagraph (A) of this paragraph, the Board shall give due weight to the views of the community and the affected Advisory Neighborhood Commission.

(3) The petition for exemption shall include any existing site market studies that justify the conversion.

(4) Petitioners shall certify that they have notified the Advisory Neighborhood Commission ("ANC") in which the station is located and any ANC within one-quarter mile of the station, and has met or offered to meet with any affected ANC prior to submission of the petition for exemption regarding their plans for the station and its impact on the neighborhood. The petitioners shall certify to the Board that should the application be granted, any later changes to the building design or lighting will be submitted to any affected ANC prior to the application for building permits.

(5) The Mayor shall issue a determination on the petition not less than 45 days, nor more than 60 days, after the date the petition is submitted, deemed complete, and notice thereof has been published in the D.C. Register. If the Mayor does not issue a determination within the 60 days the petition shall be deemed approved.

(d-1) A distributor shall not attempt to threaten or coerce an operator of a full service retail service station into:

(1) Converting the station from a full service retail service station to a non-full service retail service station; or

(2) Submitting a petition for exemption from the requirements of subsections (b) and (c) of this section to the Board.

(e)(1) Within 30 days of March 1, 2000, the Mayor shall appoint a Gas Station Advisory Board to make recommendations on petitions for exemptions. The Board shall consist of 5 members: one representing the retail service station dealers, one representing the oil companies, 2 representing the consumer interest, and one representing the Mayor. Members of the Board appointed under this subsection shall continue to serve until their successors are appointed.

(2) The Board shall establish and publish, for 30 days comment, the rules and procedures which shall govern its conduct.

(3) The Board may establish and publish, for 30 days comment, additional criteria which shall be used in reviewing the petitions for exemptions.

(4) Repealed.

(5) This subsection shall apply as of October 1, 1999.

(f) The Mayor shall study the motor vehicle repair, maintenance, and other services being offered by existing full service retail stations and non-full service retail service stations to residents, commercial establishments, commuters, and other affected persons in the District of Columbia, both in terms of adequacy and in terms of convenience. This study shall include an analysis of the impact of converting existing full service retail service stations to non-full service retail service stations in various areas of the District of Columbia. The Mayor shall study the adequacy of existing retail service stations to serve the needs and convenience of residents, commercial establishments, commuters, and other affected persons with respect to the retail

sale of motor fuels, petroleum products, and automotive products in various areas of the District of Columbia. The study shall include an examination of the petroleum products and automotive products being offered by commercial establishments other than retail service stations. The Mayor shall, if necessary, present to the Council a preliminary report within 30 days after September 21, 2000. A final report detailing the findings of the study, including the Mayor's recommendations or proposals with respect to any necessary or desirable legislation or other actions, shall be submitted to the Council no later than June 1, 2001.

(f-1) On January 1, 2009, the Gas Station Advisory Board shall provide to the Council a report on the impact of the Retail Service Station Amendment Act of 2007 [D.C. Law 17-80]. The report shall include statistical data as to the impact on independent dealers as a result of jobbers operating the retail service stations they own on:

- (1) Independent dealers;
- (2) Gasoline prices;
- (3) Opening of new retail service stations; and
- (4) Closing of existing retail service stations.

(g)(1) Any person, including the principal officers or agents of a corporation or association, who falsely certifies a petition for exemption, or willfully or knowingly fails to provide information required by this chapter, or intentionally provides misleading information required by this chapter, upon conviction, shall be subject to a fine of not less than \$2,000, but not more than \$5,000, for each offense.

(2) Any owner or operator of a retail service station who converts or causes the conversion of the retail service station without procuring an exemption pursuant to this section shall be guilty of a civil infraction, subject to a penalty of \$20,000, and the license to operate the retail service station shall be suspended or revoked until such time as operation comes into compliance with this chapter. The Mayor may adjust the fine by rulemaking.

(3) Any owner or operator of a retail service station which, as of April 8, 2005, has been converted into a non-full service facility in violation of this section, shall have 90 days to either restore the facility to full service or obtain an exemption from the from the Gas Station Advisory Board pursuant to subsection (d) of this section. Any owner or operator who fails to comply with the provisions of this subsection shall be subject to a penalty of not less than \$5,000 per day.

(h) The District of Columbia Office of Energy, unless another agency is designated by the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this section which shall include a requirement that each petition for exemption include an estimated date of completion for each phase of a full service retail station conversion.

(i) The Office of Energy or successor agency, unless the Mayor shall direct otherwise, shall be the agency charged with the civil enforcement of this section. The adjudication of any civil infraction under this section shall be pursuant to Chapter 18A of Title 2 [§ 2-1831.01 et seq.].

(j) The Mayor shall notify the Gas Station Advisory Board of any building or construction permit application filed by or on behalf of an owner or operator of

a full service retail service station. The Mayor shall provide a copy of the permit application within 10 days of receipt.

(Apr. 19, 1977, D.C. Law 1-123, § 5-301, 24 DCR 2371; Dec. 29, 1979, D.C. Law 3-44, § 2(c), 26 DCR 2093; Oct. 24, 1981, D.C. Law 4-45, § 2, 28 DCR 4269; Mar. 14, 1985, D.C. Law 5-145, § 2, 31 DCR 5975; Dec. 16, 1987, D.C. Law 7-59, § 2, 34 DCR 7085; Sept. 21, 1988, D.C. Law 7-148, § 2, 35 DCR 5427; Aug. 17, 1991, D.C. Law 9-44, § 2, 38 DCR 4986; Apr. 18, 1996, D.C. Law 11-110, § 22, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-196, § 2, 43 DCR 4564; June 24, 2000, D.C. Law 13-130, § 2, 47 DCR 2688; Apr. 8, 2005, D.C. Law 15-297, § 2(d), 52 DCR 1485; Jan. 29, 2008, D.C. Law 17-80, § 2(b), 54 DCR 11883; July 18, 2005, D.C. Law 18-35, § 2(a), 56 DCR)

Section references. — This section is referred to in § 36-302.05.

Prior Codifications. — 1981 Ed., § 10-231.
1973 Ed., § 10-231.

Effect of amendments. — D.C. Law 13-130 rewrote this section, which previously read:

“(a) For the purposes of this section, the term ‘full service retail service station’ means any retail service station location which provides a garage, service bay, work area, or similar enclosed area for repairing, maintaining, servicing, or otherwise working on motor vehicles, or any service islands. Such repair, maintenance, and service work may include, but is not limited to, the installation or replacement of batteries, tires, fan belts, lights, brakes, water pumps, mufflers and other parts and accessories and the performance of motor oil changes, lubrications, wheel alignments, tune-ups, tire repairs, brake adjustments, and general repair and maintenance work and services.

“(b) No retail service station which is operated as a full service retail service station on or after April 19, 1977, may be structurally altered, modified, or otherwise converted, irrespective of the type or magnitude of the alteration, modification, or conversion, including, but not limited to, any alteration, modification, or conversion which has the effect of merely obstructing access to an existing garage, service bay, work area, or similar enclosed area by any motor vehicle which was previously accommodated, into a non-full service facility until October 1, 1999.

“(c) No person who is an operator of any full service retail service station on or after April 19, 1977, including any person who is a subsequent operator of any such retail service station, or who, in any manner, controls the operation of any such retail service station, shall substantially reduce the number, types, quantity, or quality of the repair, maintenance, and other services, including the retail sale of motor fuels, petroleum products, and automotive products, previously offered until October 1, 1999. Such operators shall maintain the retail

service station’s existing garages, service bays, work areas, and similar areas in a fully operational condition and reasonably equipped to perform repair, maintenance, and service work on motor vehicles, including the provision of a qualified individual or individuals who is or are capable of performing repair, maintenance, and service work on motor vehicles during a reasonable number of hours per day and of days per week. This subsection shall not be construed as prohibiting any person who operates or controls a full service retail service station from discontinuing the retail sale of motor fuels at such retail service station, provided that less than 20 per centum of such retail service station’s gross revenue derived from the retail sale of motor fuels, petroleum products, and automotive products and from the repair, maintenance, and servicing of motor vehicles is derived from the retail sale of motor fuels, and provided further that such discontinuance of the retail sale of motor fuels shall not authorize any other substantial reduction in repair, maintenance, or other services previously offered. This subsection shall not be construed as prohibiting a full service retail service station from selling motor fuels on a self-service basis, provided that such retail service station continues to sell motor fuels on a non-self-service basis.

“(d)(1) A petition for exemption shall be filed with the Mayor by both a distributor and a retail dealer (‘petitioners’). The Mayor may grant an exemption to the prohibitions contained in subsections (b) and (c) of this section if the petitioners agree in writing that the distributor will perform the following:

“(A) Structurally alter, modify, or otherwise convert a retail service station, irrespective of the type or magnitude of the alteration, modification, or conversion, including, but not limited to, any alteration, modification, or conversion that has the effect of merely obstructing access to an existing garage, service bay, work area, or similar enclosed area by any motor vehicle that was previously accommodated, into a non-full service facility; or

"(B) Substantially reduce the number, type, quantity, or quality of repairs, maintenance, and other services including the retail sale of motor fuels, petroleum products, and automotive products; and

"(C) Certify that a station is experiencing financial hardship; or

"(D) Certify that there is another retail service station within 1 mile of the station that provides equivalent service facilities; and

"(E) Certify that the distributor will improve the station in the following ways:

"(i) Improve or increase the lighting of the facility;

"(ii) Improve customer accessibility to the gasoline dispensers; and

"(iii) Improve customer conveniences including separate mens and womens restroom facilities, a working air hose for automobile and bicycle tires, and water for windshield cleaning equipment.

"(2) The Mayor shall issue a determination on the petition within 45 days after the date the petition is submitted and deemed complete. If the Mayor does not issue a recommendation within the 45 days the petition shall be deemed approved.

"(e)(1) Within 30 days of the effective date of the Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Emergency Act of 1996, the Mayor shall appoint a Gas Station Advisory Board to make recommendations on petitions for exemptions. The Board shall consist of 5 members: One representing the retail service station dealers, 1 representing the oil companies, 2 representing the consumer interest, and 1 representing the Mayor.

"(2) The Board shall establish and publish, for 30 days comment, the rules and procedures which shall govern its conduct.

"(3) The Board may establish and publish, for 30 days comment, additional criteria which shall be used in reviewing the petitions for exemptions.

"(f) The Mayor shall study the motor vehicle repair, maintenance, and other services being offered by existing full service retail stations and non-full service retail service stations to residents, commercial establishments, commuters, and other affected persons in the District of Columbia, both in terms of adequacy and in terms of convenience. This study shall include an analysis of the impact of converting existing full service retail service stations to non-full service retail service stations in various areas of the District of Columbia. The Mayor shall study the adequacy of existing retail service stations to serve the needs and convenience of residents, commercial establishments, commuters, and other affected persons with respect to the retail sale of motor fuels, petroleum products, and automotive products

in various areas of the District of Columbia. The study shall include an examination of the petroleum products and automotive products being offered by commercial establishments other than retail service stations. The Mayor shall, if necessary, present to the Council a preliminary report within 30 days after September 21, 1988. A final report detailing the findings of the study, including the Mayor's recommendations or proposals with respect to any necessary or desirable legislation or other actions, shall be submitted to the Council no later than June 1, 1989.

"(g) Any person, including the principal officers or agents of a corporation or association, who falsely certifies a petition for exemption, or willfully or knowingly fails to provide information required by this act, or intentionally provides misleading information required by this act, upon conviction, shall be subject to a fine of not less than \$500, but not more than \$2,000, for each offense.

"(h) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1 issue rules to implement the provisions of this act which shall include a requirement that each petition for exemption include an estimated date of completion for each phrase of a full service retail station conversion."

D.C. Law 15-297, in subsec. (b), deleted "until October 1, 2005" following "nonfull service facility"; in subsec. (c), deleted "until October 1, 2005" following "previously offered"; repealed subsec. (e)(4); rewrote subsec. (g); in subsec. (h), substituted "The District of Columbia Office of Energy, unless another agency is designated by the Mayor" for "The Mayor"; and added subsecs. (i) and (j).

D.C. Law 17-80 added subsecs. (d-1) and (f-1).

D.C. Law 18-35 rewrote subsec. (d)(2).

Temporary Amendment of Section. — Section 2 of D.C. Law 11-68 amended subsection (b) by striking the phrase "October 1, 1995" and inserting the phrase "October 1, 1999" in its place; amended subsection (c) by striking the phrase "October 1, 1995" and inserting the phrase "October 1, 1999" in its place; and amended paragraph (e)(4) by striking the phrase "October 1, 1995" and inserting the phrase "October 1, 1999" in its place.

Section 3(b) of D.C. Law 11-68 provided that the act shall expire after 225 days of its having taken effect or upon the effective date of the Extension of the Moratorium on Retail Service Station Conversions Amendment Act of 1995, whichever comes first.

Section 202 of D.C. Law 11-206 rewrote (e).

Section 401(b) of D.C. Law 11-206 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 13-72 amended this Act to establish a moratorium on the conversion of full service retail service stations to limited

service retail stations until October 1, 2003, and to extend the life of the gas station advisory board.

Section 3(b) of D.C. Law 13-72 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Extension of the Moratorium on Retail Service Station Conversions Emergency Amendment Act of 1995 (D.C. Act 11-101, July 21, 1995, 42 DCR 4007).

For temporary amendment of section, see § 2 of the Extension of the Moratorium on Retail Service Station Conversions Emergency Act of 1996 (D.C. Act 11-280, June 28, 1996, 43 DCR 3667), § 2 of the Extension of the Moratorium on Retail Service Station Conversions Congressional Review Emergency Act of 1996 (D.C. Act 11-419, October 28, 1996, 43 DCR 6088), § 2 of the Extension of the Moratorium on Retail Service Station Conversions Second Congressional Review Emergency Act of 1996 (D.C. Act 11-479, December 30, 1996, 44 DCR 209), and § 2 of the Extension of the Moratorium on Retail Service Station Conversions Congressional Review Emergency Act of 1997 (D.C. Act 12-19, March 3, 1997, 44 DCR 1762).

For temporary requirement for the Mayor to issue rules to implement the provisions of this act, see § 3 of the Extension of the Moratorium on Retail Service Station Conversions Emergency Act of 1996 (D.C. Act 11-280, June 28, 1996, 43 DCR 3667), § 3(a) of the Extension of the Moratorium on Retail Service Station Conversions Congressional Review Emergency Act of 1996 (D.C. Act 11-419, October 28, 1996, 43 DCR 6088), § 3 of the Extension of the Moratorium on Retail Service Station Conversions Second Congressional Review Emergency Act of 1996 (D.C. Act 11-479, December 30, 1996, 44 DCR 209), and see § 3 of the Extension of the Moratorium on Retail Service Station Conversions Congressional Review Emergency Act of 1997 (D.C. Act 12-19, March 3, 1997, 44 DCR 1762).

For temporary designation of title as the Gas Station Advisory Board Re-establishment Emergency Act of 1996, see § 201 of the Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Emergency Act of 1996 (D.C. Act 11-356, August 8, 1996, 43 DCR 4561).

Legislative history of Law 1-123. — For legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

Legislative history of Law 3-44. — For legislative history of D.C. Law 3-44, see Historical and Statutory Notes following § 36-302.01.

Legislative history of Law 4-45. — Law 4-45, the “Extension of the Moratorium on Retail Service Station Conversions Act of

1981,” was introduced in Council and assigned Bill No. 4-217, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on June 30, 1981 and July 14, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-80 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-145. — Law 5-145, the “Extension of the Moratorium on Retail Service Station Conversions Act of 1984,” was introduced in Council and assigned Bill No. 5-438, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on October 9, 1984 and October 23, 1984, respectively. Signed by the Mayor on November 8, 1984, it was assigned Act No. 5-203 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-59. — Law 7-59, the “Extension of the Moratorium on Retail Service Station Conversions Amendment Temporary Act of 1987,” was introduced in Council and assigned Bill No. 7-309. The Bill was adopted on first and second readings on September 29, 1987 and October 13, 1987, respectively. Signed by the Mayor on October 26, 1987, it was assigned Act No. 7-92 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-148. — Law 7-148, the “Extension of the Moratorium on Retail Service Station Conversions Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-316, which was referred to the Committee on Consumer and Regulatory Affairs and reassigned to the Committee on Human Services. The Bill was adopted on first and second readings on June 14, 1988 and June 28, 1988, respectively. Signed by the Mayor on June 30, 1988, it was assigned Act No. 7-200 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-44. — Law 9-44, the “Extension of the Moratorium on Retail Service Station Conversions Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-127, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-81 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-68. — Law 11-68, the “Extension of the Moratorium on Retail Service Station Conversions Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-378. The Bill was adopted on first and second readings on July 11, 1995, and July 29, 1995, respectively.

Signed by the Mayor on August 9, 1995, it was assigned Act No. 11-131 and transmitted to both Houses of Congress for its review. D.C. Law 11-68 became effective on October 26, 1995.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-196. — Law 11-196, the “Extension of Moratorium on Retail Service Station Conversions and the Gas Station Advisory Board Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-109, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-358 and transmitted to both Houses of Congress for its review. D.C. Law 11-196 became effective on April 9, 1997.

Delegation of Authority. — Delegation of authority under D.C. Law 7-148 “Extension of the Moratorium on Retail Service Station Conversions Amendment Act of 1988”, see Mayor’s Order 89-20, January 23, 1989.

Mayor’s Orders. — Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Amoco Oil Co. Station located at 2917 Martin Luther King Jr. Avenue, S.E., Washington, D.C: See Mayor’s Order 90-61, March 21, 1990.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Amoco Oil Company (Ronnie’s Amoco) Station Located at 2830 Sherman Avenue, N.W., Washington, D.C: See Mayor’s Order 92-14, February 10, 1992.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Exxon Company, U.S.A. Station Located at 5215 North Capitol Street, N.E., Washington, D.C: See Mayor’s Order 92-113, September 21, 1992.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Exxon Company, U.S.A. Station Located at 1 Florida Avenue, N.E., Washington, D.C: See Mayor’s Order 92-129, October 20, 1992.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Amoco Oil Company Station Located at 2350 South Dakota Avenue, N.E., Washington, D.C: See Mayor’s Order 93-52, April 30, 1993.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Exxon Company, U.S.A. Station Located at 3201 Pennsylvania Avenue, S.E: See Mayor’s Order 94-159, July 12, 1994 (41 DCR 4965).

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Exxon Stations located at 3535 Connecticut Ave., N.W., and Connecticut Ave., N.W: See Mayor’s Order 98-91, June 9, 1998 (45 DCR 4562).

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Mobile Station located at 2200 P St., N.W: See Mayor’s Order 98-119, July 24, 1998 (45 DCR 6381).

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Exxon Station Located at 5515 South Dakota Avenue, N.E., see Mayor’s Order 2000-71, May 2, 2000 (47 DCR 4752).

Fleet Management Policy, see Mayor’s Order 2000-75, May 11, 2000 (47 DCR 4758).

Subchapter IV-A. Franchisee Purchase Rights.

§ 36-304.11. Definitions.

Expired.

(Apr. 19, 1977, D.C. Law 1-123, § 5A-301, as added July 18, 2005, D.C. Law 18-35, § 2(b), 56 DCR 4282.)

Legislative history of Law 18-35. — Law 18-35, the “Retail Service Station Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-88, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 21, 2009, and May 5, 2009, respectively. Signed by the Mayor on May 21, 2009, it was assigned Act No. 18-86 and transmitted to both Houses

of Congress for its review. D.C. Law 18-35 became effective on July 18, 2009.

Editor’s notes. — This subchapter expired on January 1, 2011, pursuant to section 3 of D.C. Law 18-35.

Section 3 of D.C. Law 18-35 provided: “Section 2(b) enacting this subchapter shall expire on January 1, 2011.”

CASE NOTES

Retroactive application.

District of Columbia Retail Service Station Amendment Act (RSSA), which restricted assignment of gas station franchise agreements, did not apply retroactively to franchisor's assignment of gas station franchise and sale of station property, which occurred prior to date RSSA became law; RSSA did not contain express retroactivity language and was devoid of any clear implication that it was intended to apply retroactively, and retroactive application of RSSA was disfavored in District of Columbia, given that it imposed new duty on franchisors to offer franchisees right of first refusal. *Metroil, Inc. v. ExxonMobil Oil Corp.*, 672 F.3d 1108, 2012 U.S. App. LEXIS 5712 (C.A.D.C. 2012).

District of Columbia's Retail Service Station Amendment Act (RSSA), which restricts assignment of gas station franchise agreements, applies only prospectively to sales of service station premises occurring after its effective date. *D.C. Oil, Inc. v. ExxonMobil Oil Corp.*, 746 F.Supp.2d 152, 2010 U.S. Dist. LEXIS 115193 (2010).

Fact question as to exact date gas station premises was transferred from franchisee to

gas distributor precluded court from deciding, on motion to dismiss, issue of whether District of Columbia's Retail Service Station Amendment Act (RSSA) applied to sale of service station premises; RSSA did not apply retroactively and disputed date of property transfer was within days of Act's effective date. *D.C. Oil, Inc. v. ExxonMobil Oil Corp.*, 746 F.Supp.2d 152, 2010 U.S. Dist. LEXIS 115193 (2010).

District of Columbia Retail Service Station Amendment Act (RSSA), which restricted the assignment of gas station franchise agreements, did not apply retroactively to franchisor's assignment of gas station franchise and sale of station property, which occurred prior to date RSSA became law; RSSA contained no express retroactivity language and was devoid of any clear implication that it was intended to apply retroactively, and retroactive application of RSSA was disfavored in the District of Columbia, given that it imposed new duty on franchisors to offer franchisees a right of first refusal. *Metroil, Inc. v. ExxonMobil Oil Corp.*, 724 F.Supp.2d 70, 2010 U.S. Dist. LEXIS 72562 (2010), affirmed by 672 F.3d 1108, 400 U.S. App. D.C. 43, 2012 U.S. App. LEXIS 5712 (2012).

§ 36-304.12. Franchisee's right of first refusal.

Expired.

(Apr. 19, 1977, D.C. Law 1-123, § 5A-302, as added July 18, 2005, D.C. Law 18-35, § 2(b), 56 DCR 4282.)

Legislative history of Law 18-35. — For Law 18-35, see notes following § 36-304.11.

Editor's notes. — This subchapter expired

on January 1, 2011, pursuant to section 3 of D.C. Law 18-35.

CASE NOTES

Retroactive application.

New legal consequences would have attached to events completed before effective date of District of Columbia Retail Service Station Amendment Act (RSSA), which restricted assignment of gas station franchise agreements, and thus presumption against retroactivity applied absent clear showing that Council in-

tended retroactive application, since RSSA could impose damages on franchisors for already completed commercial transactions and it also might require franchisors to unwind completed transactions. *Metroil, Inc. v. ExxonMobil Oil Corp.*, 672 F.3d 1108, 2012 U.S. App. LEXIS 5712 (C.A.D.C. 2012).

§ 36-304.13. Duty of good faith in negotiating lease terms.

Expired.

(Apr. 19, 1977, D.C. Law 1-123, § 5A-303, as added July 18, 2005, D.C. Law 18-35, § 2(b), 56 DCR 4282.)

§ 36-304.14

TRADE PRACTICES

Legislative history of Law 18-35. — For on January 1, 2011, pursuant to section 3 of Law 18-35, see notes following § 36-304.11. D.C. Law 18-35.

Editor's notes. — This subchapter expired

§ 36-304.14. Remedy for violation of subchapter.

Expired.

(Apr. 19, 1977, D.C. Law 1-123, § 5A-304, as added July 18, 2005, D.C. Law 18-35, § 2(b), 56 DCR 4282.)

Legislative history of Law 18-35. — For on January 1, 2011, pursuant to section 3 of Law 18-35, see notes following § 36-304.11. D.C. Law 18-35.

Editor's notes. — This subchapter expired

§ 36-304.15. Applicability.

Expired.

(Apr. 19, 1977, D.C. Law 1-123, § 5A-305, as added July 18, 2005, D.C. Law 18-35, § 2(b), 56 DCR 4282.)

Legislative history of Law 18-35. — For on January 1, 2011, pursuant to section 3 of Law 18-35, see notes following § 36-304.11. D.C. Law 18-35.

Editor's notes. — This subchapter expired

Subchapter V. General Provisions.

§ 36-305.01. Statement of public policy.

This chapter shall constitute a statement of the public policy of the District of Columbia. The provisions of this chapter shall be liberally construed in order to effectively carry out the purposes of this chapter in the interests of the public health, safety, and welfare.

(Apr. 19, 1977, D.C. Law 1-123, § 6-401, 24 DCR 2371.)

Prior Codifications. — 1981 Ed., § 10-241. legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

Legislative history of Law 1-123. — For

CASE NOTES

In general.

Because the District of Columbia Retail Service Station Act seeks to effectuate broad remedial purposes, its provisions must be liberally construed in favor of independent retailers. D.C. Code 1981, § 10-241. *Dege v. Milford*, 574 A.2d 288, 1990 D.C. App. LEXIS 102 (1990).

Preemption provision of Petroleum Marketing Practices Act preempted only those provisions of District of Columbia Retail Service Station Act which addressed termination, nonrenewal, or notice required with respect to those practices; any provision regulating some other aspect of franchise relationship was pre-

empted under doctrine of implied preemption only insofar as it stood as obstacle to accomplishment and execution of full purposes and objectives of the federal Act. Petroleum Marketing Practices Act, § 106(a), 15 U.S.C. § 2806(a); D.C. Code 1981, §§ 10-201 to 10-242. *Davis v. Gulf Oil Corp.*, 485 A.2d 160, 1984 D.C. App. LEXIS 559 (1984).

Provision of District of Columbia Retail Service Station Act setting forth 90-day notice requirement governing franchisor's attempt to terminate, cancel, or fail to renew a franchise and specifying remedy for violation of the notice requirement was preempted by notice re-

quirements of Petroleum Marketing Practices Act. Petroleum Marketing Practices Act, § 106(a), 15 U.S.C. § 2806(a); D.C. Code 1981, § 10-223(b)(1, 3). *Davis v. Gulf Oil Corp.*, 485 A.2d 160, 1984 D.C. App. LEXIS 559 (1984).

Provision of District of Columbia Retail Service Station Act establishing one year mini-

mum lease term for franchises was not preempted by Petroleum Marketing Practices Act. Petroleum Marketing Practices Act, § 106(a), 15 U.S.C. § 2806(a); D.C. Code 1981, § 10-221(a)(10). *Davis v. Gulf Oil Corp.*, 485 A.2d 160, 1984 D.C. App. LEXIS 559 (1984).

§ 36-305.02. Severability.

If any provision or part thereof of this chapter or the application thereof to any person or circumstance is declared unconstitutional or invalid, such invalidity, unconstitutionality, or inapplicability shall not affect any other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, all provisions of this chapter are hereby declared to be severable.

(Apr. 19, 1977, D.C. Law 1-123, § 6-402, 24 DCR 2371.)

Prior Codifications. — 1981 Ed., § 10-242. 1973 Ed., § 10-242.

Legislative history of Law 1-123. — For

legislative history of D.C. Law 1-123, see Historical and Statutory Notes following § 36-301.01.

CHAPTER 4. TRADE SECRETS.

Sec.

- 36-401. Definitions.
- 36-402. Injunctive relief.
- 36-403. Damages.
- 36-404. Attorney's fees.
- 36-405. Preservation of secrecy.
- 36-406. Statute of limitations.
- 36-407. Effect on other law.

Sec.

- 36-408. Uniformity of application and construction.
- 36-409. Applicability.
- 36-410. Disclosure of information to enforce the Occupational Safety and Health Act of 1988 and Pesticide Operations Act of 1978.

§ 36-401. Definitions.

For the purposes of this chapter, the term:

(1) "Improper means" means theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(A) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(B) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) Used improper means to acquire knowledge of the trade secret; or

(ii) At the time of disclosure or use, knew or had reason to know that the trade secret was:

(I) Derived from or through a person who had utilized improper means to acquire it;

(II) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;

(III) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) Before a material change in his or her position, knew or had reason to know that the information was a trade secret and knowledge of the trade secret had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(A) Derives actual or potential independent economic value, from not being generally known to, and not being readily ascertainable by, proper means by another who can obtain economic value from its disclosure or use; and

(B) Is the subject of reasonable efforts to maintain its secrecy.

(Mar. 16, 1989, D.C. Law 7-216, § 2, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-501.

Legislative history of Law 7-216. — Law 7-216, the "Uniform Trade Secrets Act of 1988," was introduced in Council and assigned Bill

No. 7-426, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the

Mayor on January 6, 1989, it was assigned Act No. 7-291 and transmitted to both Houses of Congress for its review.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Trade Secrets Act.

CASE NOTES

ANALYSIS

Disclosure of trade secrets.
Discretion of court.
Preemption.
Summary judgment.
Trade secret.

Disclosure of trade secrets.

Under North Carolina, District of Columbia, and Maryland law, video tracking system which allowed viewers to monitor movements of trucks and other vehicles in Afghanistan was not a "trade secret" since developer failed to take reasonable steps to maintain secrecy of system; although developer created system in confidence he shared confidential system with defendants and prospective clients without first requiring any kind of confidentiality agreement, and merely labeling documentation of system "strictly confidential" was insufficient to maintain secrecy of contents. *Deegan v. Strategic Azimuth LLC*, 768 F.Supp.2d 107, 2011 U.S. Dist. LEXIS 22439 (2011).

Allegations that petroleum company wrongfully disclosed other trade secrets of company that provided computer-based training courses for oil and gas industry workers to third parties, including training company's partner company, were insufficient to state claim of misappropriation of trade secrets and conversion under District of Columbia law, absent allegations that trade secrets training company itself disclosed to its partner were actually different from the trade secrets it disclosed to petroleum company or that such trade secrets had been misappropriated. *Am. Petroleum Inst. v. TechnoMedia Int'l, Inc.*, 699 F.Supp.2d 258, 2010 U.S. Dist. LEXIS 31383 (2010).

Discretion of court.

Action by subcontractor of unsuccessful bidder alleging that successful bidder and its employee tortiously interfered with economic advantage, engaged in unfair competition, misappropriated confidential and proprietary information, and violated District of Columbia Uniform Trade Secrets Act (DCUTSA) by using improper means to secure award of contract with federal government did not raise substantial federal question over which federal court could exercise removal jurisdiction, even though complaint cited federal conflict of interest statutes and regulations, and implicated other federal statutes, named former federal employee as defendant, and alleged that one federal employee was involved in wrongdoing,

where subcontractor did not sue agency or its employee, there was no mention of procurement statute or agency guidelines in complaint, and complaint did not allege violation of conflict of interest statutes and regulations. *Wash. Consulting Group, Inc. v. Raytheon Tech. Servs. Co., LLC*, 760 F.Supp.2d 94, 2011 U.S. Dist. LEXIS 5518 (2011).

When interpreting the District of Columbia Uniform Trade Secrets Act (DCUTSA), district court may consider how other jurisdictions have interpreted their trade secret acts. *DSMC, Inc. v. Convera Corp.*, 479 F.Supp.2d 68, 2007 U.S. Dist. LEXIS 21679 (2007).

Preemption.

Software developer's common law and statutory conspiracy claims that were predicated on misappropriation of trade secrets were preempted by developer's claim under District of Columbia Uniform Trade Secrets Act (DCUTSA). *DSMC, Inc. v. Convera Corp.*, 479 F.Supp.2d 68, 2007 U.S. Dist. LEXIS 21679 (2007).

Summary judgment.

Sponsor of non-profit Armenian genocide museum that sued former trustee failed to show that trustees utilized its confidential mailing and database lists without permission, as required to maintain claim for misappropriation of trade secrets under District of Columbia law; record did not support allegations that trustees appropriated mailing lists for use by Armenian media publication, political action committee (PAC), or any other of trustee's organizations. *Armenian Assembly of Am., Inc. v. Cafesjian*, 772 F.Supp.2d 20, 2011 U.S. Dist. LEXIS 7438 (2011).

Genuine issue of material fact existed as to whether competitor misappropriated alleged trade secrets of software developer in its media archive system, precluding summary judgment on developer's claim under District of Columbia Uniform Trade Secrets Act (DCUTSA). *DSMC, Inc. v. Convera Corp.*, 479 F.Supp.2d 68, 2007 U.S. Dist. LEXIS 21679 (2007).

Genuine issue of material fact existed as to whether features identified by software developer in its media archive system constituted trade secrets, precluding summary judgment on developer's misappropriation claim under District of Columbia Uniform Trade Secrets Act (DCUTSA). *DSMC, Inc. v. Convera Corp.*, 479 F.Supp.2d 68, 2007 U.S. Dist. LEXIS 21679 (2007).

Genuine issues of material fact existed as to whether e-mail messages and software company's executive summary should have alerted plaintiff, a company previously engaged in acquisition talks with the software company, that the software company intended to expand its business in a way that involved appropriation of plaintiff's trade secrets, precluding summary judgment in favor of the software company in plaintiff's misappropriation of trade secrets action, on the ground that plaintiff consented to the software company's conduct. *New Media Strategies, Inc. v. Pulpfree, Inc.*, 941 A.2d 420, 2008 D.C. App. LEXIS 21 (2008).

Genuine issue of material fact existed as to whether plaintiff, a company previously engaged in acquisition talks with software company, knew or had reason to know of software company's new website, advertising its expanded business, precluding summary judgment in favor of the software company in plaintiff's misappropriation of trade secrets action, on the ground that the statute of limitations began to run at the time the website was established. *New Media Strategies, Inc. v. Pulpfree, Inc.*, 941 A.2d 420, 2008 D.C. App. LEXIS 21 (2008).

Genuine issues of material fact existed as to whether e-mail messages and software company's executive summary should have alerted plaintiff, a company previously engaged in acquisition talks with the software company, that the software company intended to expand its business to provide services similar to those provided by plaintiff's business, precluding summary judgment in favor of the software company in plaintiff's misappropriation of trade secrets action, on the ground that the statute of limitations began to run at the time of the e-mail messages and executive summary. *New Media Strategies, Inc. v. Pulpfree, Inc.*, 941 A.2d 420, 2008 D.C. App. LEXIS 21 (2008).

Trade secret.

In addition to establishing that there is a trade secret, a plaintiff claiming misappropriation of trade secrets also must show that the defendant gained access to the trade secrets through improper means or that the defendant improperly used or disclosed trade secrets. *DSMC, Inc. v. Convera Corp.*, 479 F.Supp.2d 68, 2007 U.S. Dist. LEXIS 21679 (2007).

For information to constitute a trade secret under the District of Columbia Uniform Trade Secrets Act (DCUTSA), (1) the information must be secret; (2) its value must derive from its secrecy; and (3) its owner must use reasonable efforts to safeguard its secrecy. *DSMC, Inc. v. Convera Corp.*, 479 F.Supp.2d 68, 2007 U.S. Dist. LEXIS 21679 (2007).

Under District of Columbia law, disclosure of allegedly confidential details of aircraft de-icing process in fax sent during business negotia-

tions was insufficient to deprive information of its trade secret status; fax was marked as confidential. *Catalyst & Chem. Servs. v. Global Ground Support*, 350 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 25069 (2004), dismissed by 132 Fed. Appx. 837, 2005 U.S. App. LEXIS 10228 (Fed. Cir. 2005), affirmed without opinion by 173 Fed. Appx. 825, 2006 U.S. App. LEXIS 6947 (Fed. Cir. 2006).

Under District of Columbia law, owner is not required to maintain absolute secrecy in order to retain trade secret protection; only reasonable efforts, such as implementing confidentiality agreements, are required. *Catalyst & Chem. Servs. v. Global Ground Support*, 350 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 25069 (2004), dismissed by 132 Fed. Appx. 837, 2005 U.S. App. LEXIS 10228 (Fed. Cir. 2005), affirmed without opinion by 173 Fed. Appx. 825, 2006 U.S. App. LEXIS 6947 (Fed. Cir. 2006).

Combination of publicly know information qualifies as "trade secret," under District of Columbia law, only when there is added value to combination over value of individual parameters, i.e., when whole is more than sum of parts. *Catalyst & Chem. Servs. v. Global Ground Support*, 350 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 25069 (2004), dismissed by 132 Fed. Appx. 837, 2005 U.S. App. LEXIS 10228 (Fed. Cir. 2005), affirmed without opinion by 173 Fed. Appx. 825, 2006 U.S. App. LEXIS 6947 (Fed. Cir. 2006).

Issue of material fact as to whether combination of parameters relating to angles, distances, pressures and temperatures used by plaintiff's aircraft de-icing process was sufficient secret to warrant protection, under District of Columbia law, precluded summary judgment on its trade secret misappropriation claim. *Catalyst & Chem. Servs. v. Global Ground Support*, 350 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 25069 (2004), dismissed by 132 Fed. Appx. 837, 2005 U.S. App. LEXIS 10228 (Fed. Cir. 2005), affirmed without opinion by 173 Fed. Appx. 825, 2006 U.S. App. LEXIS 6947 (Fed. Cir. 2006).

Even if all of relevant information is publicly available, unique combination of that information, which adds value to information, may qualify as "trade secret" under District of Columbia law. *Catalyst & Chem. Servs. v. Global Ground Support*, 350 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 25069 (2004), dismissed by 132 Fed. Appx. 837, 2005 U.S. App. LEXIS 10228 (Fed. Cir. 2005), affirmed without opinion by 173 Fed. Appx. 825, 2006 U.S. App. LEXIS 6947 (Fed. Cir. 2006).

Information which is generally known within industry, even if it is not generally known to public, cannot constitute "trade secret" under District of Columbia law. *Catalyst & Chem. Servs. v. Global Ground Support*, 350 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 25069 (2004), dismissed by 132 Fed. Appx. 837, 2005 U.S. App.

LEXIS 10228 (Fed. Cir. 2005), affirmed without opinion by 173 Fed. Appx. 825, 2006 U.S. App. LEXIS 6947 (Fed. Cir. 2006).

Under District of Columbia law, information that is generally known or readily ascertainable to public cannot constitute "trade secret." *Catalyst & Chem. Servs. v. Global Ground Support*, 350 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 25069 (2004), dismissed by 132 Fed. Appx. 837, 2005 U.S. App. LEXIS 10228 (Fed. Cir. 2005), affirmed without opinion by 173 Fed. Appx. 825, 2006 U.S. App. LEXIS 6947 (Fed. Cir. 2006).

To warrant protection of information as "trade secret," under District of Columbia law: (a) information must be secret; (b) its value must derive from secrecy; and (c) owner must use reasonable efforts to safeguard confidentiality of information. *Catalyst & Chem. Servs. v. Global Ground Support*, 350 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 25069 (2004), dismissed by

132 Fed. Appx. 837, 2005 U.S. App. LEXIS 10228 (Fed. Cir. 2005), affirmed without opinion by 173 Fed. Appx. 825, 2006 U.S. App. LEXIS 6947 (Fed. Cir. 2006).

Copyright Act did not preempt claim that aptitude test preparation service violated trade secrets of medical school aptitude test provider by misappropriating test questions and incorporating them in preparatory materials; trade secrets claim included as elements that acquisition was improper, and constituted breach of confidentiality, not found in copyright breach action. *Ass'n of Am. Med. Colleges v. Princeton Review, Inc.*, 332 F.Supp.2d 11, 2004 U.S. Dist. LEXIS 17458 (2004).

Under District of Columbia law, customer lists of a financial-services firms deserve trade-secret status under Uniform Trade Secrets Act. *Morgan Stanley DW Inc. v. Rothe*, 150 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 14880 (2001).

§ 36-402. Injunctive relief.

(a) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for a reasonable period of time to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of a misappropriation that renders a prohibitive injunction inequitable.

(c) In appropriate circumstances, an affirmative act to protect a trade secret may be compelled by court order.

(Mar. 16, 1989, D.C. Law 7-216, § 3, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-502.

Legislative history of Law 7-216. — For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Trade Secrets Act.

CASE NOTES

In general.

Under District of Columbia law, brokerage demonstrated likelihood of success on merits, so as to support temporary restraining order precluding former broker from violating covenant-not-compete banning solicitation of former clients for one-year within 100 mile radius, by demonstrating that defendant had violated agreement by soliciting former customers and removing at least one customer file; brokerage

was not required to demonstrate likelihood that it would prevail at National Association of Securities Dealers (NASD) arbitration hearing. *Morgan Stanley DW Inc. v. Rothe*, 150 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 14880 (2001).

Brokerage demonstrated requisite irreparable harm to support preliminary relief restraining former employee from violating covenant-not-to-compete and from using customer lists

and files by showing it faced loss of its customers and possibility of permanently damaged relationships with its customers through loss of confidentiality of their financial records. *Morgan Stanley DW Inc. v. Rothe*, 150 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 14880 (2001).

Public interest, as reflected in District of Columbia Uniform Trade Secrets Act, supports protecting trade-secret client lists and other confidential information through injunctive relief. *Morgan Stanley DW Inc. v. Rothe*, 150 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 14880 (2001).

Brokerage was entitled to preliminary relief restraining former broker from violating covenant not to compete and using customer lists

with competitor, where brokerage demonstrated strong likelihood of success on its claims that modest one-year covenant was enforceable, that misappropriation of customer lists violated District of Columbia Trade Secrets law, and that broker's contract provided for injunctive relief pending arbitration, where broker would otherwise suffer irreparable harm through loss of customers and loss of customer confidence in confidentiality of their records, where balance of equities favored brokerage, and where protection of trade secrets and confidential information would be in public interest. *Morgan Stanley DW Inc. v. Rothe*, 150 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 14880 (2001).

§ 36-403. Damages.

(a) A complainant is entitled to recover damages for misappropriation, unless a material and prejudicial change of position prior to acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable. Damages may include both the actual loss caused by the misappropriation and the unjust enrichment caused by the misappropriation that is not taken into account in computing actual loss. Instead of damages measured by other methods, the damages caused by misappropriation may be measured by the imposition of liability for a reasonable royalty for the unauthorized disclosure or use of a trade secret by a misappropriator.

(b) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice the award made under subsection (a) of this section.

(Mar. 16, 1989, D.C. Law 7-216, § 4, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-503.

Legislative history of Law 7-216. — For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Trade Secrets Act.

CASE NOTES

In general.

Elements of trade secret misappropriation claim under District of Columbia law are: (1) existence of trade secret; (2) acquisition of trade secret as result of confidential relationship; and (3) unauthorized use or disclosure of secret resulting in loss or damages. *Catalyst & Chem.*

Servs. v. Global Ground Support, 350 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 25069 (2004), dismissed by 132 Fed. Appx. 837, 2005 U.S. App. LEXIS 10228 (Fed. Cir. 2005), affirmed without opinion by 173 Fed. Appx. 825, 2006 U.S. App. LEXIS 6947 (Fed. Cir. 2006).

§ 36-404. Attorney's fees.

The court may award reasonable attorney's fees to the prevailing party if:

- (1) A claim of misappropriation is made in bad faith;
- (2) A motion to terminate an injunction is made or resisted in bad faith; or
- (3) Willful and malicious misappropriation exists.

(Mar. 16, 1989, D.C. Law 7-216, § 5, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-504.

Legislative history of Law 7-216. — For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Trade Secrets Act.

§ 36-405. Preservation of secrecy.

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, or sealing the records of the action and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

(Mar. 16, 1989, D.C. Law 7-216, § 6, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-505.

Legislative history of Law 7-216. — For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Trade Secrets Act.

CASE NOTES

Discovery.

Class of Medicaid beneficiaries, their counsel, and health care advocates were entitled, under Medicaid statute and regulations and pursuant to settlement order for class action against District of Columbia, to discovery of copyrighted eligibility criteria licensed for use by Medicaid managed care organizations in authorizing, re-authorizing, and/or terminating home health care (HHC), private duty nursing

(PDN), and personal care (PC) services, although criteria were trade secrets protected under District of Columbia Uniform Trade Secrets Act and federal Copyright Statutory Scheme, since there was no authority for proposition that copyright and trade secret laws trumped Medicaid statute and regulations. *Salazar v. District of Columbia*, 596 F.Supp.2d 67, 2009 U.S. Dist. LEXIS 8754 (2009).

§ 36-406. Statute of limitations.

An action for misappropriation must be brought within 3 years after the misappropriation is discovered or, by the exercise of reasonable diligence, should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

(Mar. 16, 1989, D.C. Law 7-216, § 7, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-506.

Legislative history of Law 7-216. — For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Trade Secrets Act.

CASE NOTES

Summary judgment.

Genuine issues of material fact existed as to whether e-mail messages and software company's executive summary should have alerted

plaintiff, a company previously engaged in acquisition talks with the software company, that the software company intended to expand its business in a way that involved appropriation

of plaintiff's trade secrets, precluding summary judgment in favor of the software company in plaintiff's misappropriation of trade secrets action, on the ground that plaintiff consented to the software company's conduct. *New Media Strategies, Inc. v. Pulpfree, Inc.*, 941 A.2d 420, 2008 D.C. App. LEXIS 21 (2008).

Genuine issue of material fact existed as to whether plaintiff, a company previously engaged in acquisition talks with software company, knew or had reason to know of software company's new website, advertising its expanded business, precluding summary judgment in favor of the software company in plaintiff's misappropriation of trade secrets action, on the ground that the statute of limitations began to run at the time the website was established. *New Media Strategies, Inc. v.*

Pulpfree, Inc., 941 A.2d 420, 2008 D.C. App. LEXIS 21 (2008).

Genuine issues of material fact existed as to whether e-mail messages and software company's executive summary should have alerted plaintiff, a company previously engaged in acquisition talks with the software company, that the software company intended to expand its business to provide services similar to those provided by plaintiff's business, precluding summary judgment in favor of the software company in plaintiff's misappropriation of trade secrets action, on the ground that the statute of limitations began to run at the time of the e-mail messages and executive summary. *New Media Strategies, Inc. v. Pulpfree, Inc.*, 941 A.2d 420, 2008 D.C. App. LEXIS 21 (2008).

§ 36-407. Effect on other law.

(a) Except as provided in subsection (b) of this section, this chapter supersedes conflicting tort, restitution and other law of the District of Columbia providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

(1) Contractual remedies, whether or not based upon misappropriation of a trade secret;

(2) Other civil remedies that are not based upon misappropriation of a trade secret; or

(3) Criminal remedies, whether or not based upon misappropriation of a trade secret.

(Mar. 16, 1989, D.C. Law 7-216, § 8, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-507.

Legislative history of Law 7-216. — For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Trade Secrets Act.

CASE NOTES

Summary judgment.

Genuine issues of material fact existed as to whether e-mail messages and software company's executive summary should have alerted plaintiff, a company previously engaged in acquisition talks with the software company, that the software company intended to expand its business in a way that involved appropriation of plaintiff's trade secrets, precluding summary judgment in favor of the software company in plaintiff's misappropriation of trade secrets action, on the ground that plaintiff consented to the software company's conduct. *New Media Strategies, Inc. v. Pulpfree, Inc.*, 941 A.2d 420, 2008 D.C. App. LEXIS 21 (2008).

Genuine issue of material fact existed as to whether plaintiff, a company previously engaged in acquisition talks with software com-

pany, knew or had reason to know of software company's new website, advertising its expanded business, precluding summary judgment in favor of the software company in plaintiff's misappropriation of trade secrets action, on the ground that the statute of limitations began to run at the time the website was established. *New Media Strategies, Inc. v. Pulpfree, Inc.*, 941 A.2d 420, 2008 D.C. App. LEXIS 21 (2008).

Genuine issues of material fact existed as to whether e-mail messages and software company's executive summary should have alerted plaintiff, a company previously engaged in acquisition talks with the software company, that the software company intended to expand its business to provide services similar to those provided by plaintiff's business, precluding

summary judgment in favor of the software company in plaintiff's misappropriation of trade secrets action, on the ground that the statute of limitations began to run at the time

of the e-mail messages and executive summary. *New Media Strategies, Inc. v. Pulpfree, Inc.*, 941 A.2d 420, 2008 D.C. App. LEXIS 21 (2008).

§ 36-408. Uniformity of application and construction.

This chapter shall be applied and construed to make uniform the law with respect to trade secrets among the District of Columbia and those states enacting it.

(Mar. 16, 1989, D.C. Law 7-216, § 9, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-508.

Legislative history of Law 7-216. — For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Uniform Trade Secrets Act.

§ 36-409. Applicability.

This chapter does not apply to misappropriation occurring prior to March 16, 1989. With respect to a continuing misappropriation that began prior to March 16, 1989, the chapter does not apply to the continuing misappropriation that occurs after March 16, 1989.

(Mar. 16, 1989, D.C. Law 7-216, § 10, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-509.

Legislative history of Law 7-216. — For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

Editor's notes. — Uniform Law: This section is based upon § 11 of the Uniform Trade Secrets Act.

§ 36-410. Disclosure of information to enforce the Occupational Safety and Health Act of 1988 and Pesticide Operations Act of 1978.

(a) Nothing in this chapter shall prevent the disclosure of accurate and specific information to the Mayor, other District officers or their representatives, private or public sector employees, or the Occupational Safety and Health Commission if necessary to enforce § 32-1101 et seq.

(b) Nothing in this chapter shall prevent the disclosure of information to the Mayor or other District officers or employees if necessary to enforce Change the Pesticide Operations Act of 1978.

(Mar. 16, 1989, D.C. Law 7-216, § 11, 36 DCR 519.)

Prior Codifications. — 1981 Ed., § 48-510.

Legislative history of Law 7-216. — For legislative history of D.C. Law 7-216, see Historical and Statutory Notes following § 36-401.

References in text. — The "Pesticide Oper-

ations Act of 1978," referred to in subsection (b), is probably a reference to the Pesticide Operation Act of 1977, D.C. Law 2-70, codified as § 8-401 et seq.

CHAPTER 5. FOREIGN TRADE ZONES.

Sec.

36-501. Definitions.

36-502. Authority to establish, operate, and maintain a foreign trade zone.

Sec.

36-503. Licensing and taxation.

36-504. Jurisdiction.

§ 36-501. Definitions.

For the purposes of this chapter, the term:

(1) "Private corporation" means any corporation, other than a public corporation, organized for the purpose of establishing, operating, and maintaining a foreign trade zone.

(2) "Public corporation" means the District of Columbia government or an agency of the District of Columbia government or similar organization that is financed in whole or in part by public funds.

(July 14, 1995, D.C. Law 11-28, § 2, 42 DCR 2569.)

Prior Codifications. — 2001 Ed., § 29-501.
1981 Ed., § 29-721.

Legislative history of Law 11-28. — Law 11-28, the "Foreign Trade Zones Act of 1995," was introduced in Council and assigned Bill No. 11-97, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on April 4, 1995, and May 18, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-56 and transmitted to both Houses of Congress for its review. D.C. Law 11-28 became effective on July 14, 1995.

§ 36-502. Authority to establish, operate, and maintain a foreign trade zone.

(a) Any private corporation or public corporation may make application for the privilege of establishing, operating, and maintaining a foreign trade zone or subzone in the District of Columbia, pursuant to 19 U.S.C. §§ 81a-81u. Following approval of the application by the Foreign Trade Zones Board established pursuant to 19 U.S.C. §§ 81a-81u, the private corporation or public corporation shall take all actions necessary to comply with 19 U.S.C. §§ 81a-81u and any other applicable laws, rules, and regulations adopted in accordance with 19 U.S.C. §§ 81a-81u.

(b) Any activity in the District of Columbia authorized by 19 U.S.C. §§ 81a-81u to be conducted within a foreign trade zone or subzone:

(1) May be conducted within a foreign trade zone or subzone operated by a private corporation or public corporation within the District of Columbia; and

(2) Shall comply with the Zoning Regulations of the District of Columbia set forth in title 11 of the District of Columbia Municipal Regulations (11 DCMR).

(July 14, 1995, D.C. Law 11-28, § 3, 42 DCR 2569.)

Prior Codifications. — 2001 Ed., § 29-502.
1981 Ed., § 29-722.

Legislative history of Law 11-28. — For

legislative history of D.C. Law 11-28, see Historical and Statutory Notes following § 36-501.

§ 36-503. Licensing and taxation.

Except as provided by 19 U.S.C. §§ 81a-81u, or by other Federal or District law, all activities and entities operating within a foreign trade zone that is established within the District of Columbia shall be subject to all applicable District licenses, permits, and taxation.

(July 14, 1995, D.C. Law 11-28, § 4, 42 DCR 2569.)

Prior Codifications. — 2001 Ed., § 29-503. legislative history of D.C. Law 11-28, see Historical and Statutory Notes following § 36-501.
1981 Ed., § 29-723.

Legislative history of Law 11-28. — For

§ 36-504. Jurisdiction.

The District of Columbia reserves jurisdiction in a foreign trade zone or subzone in all civil and criminal matters not relating to customs or federal diversity or federal jurisdiction.

(July 14, 1995, D.C. Law 11-28, § 5, 42 DCR 2569.)

Prior Codifications. — 2001 Ed., § 29-504. legislative history of D.C. Law 11-28, see Historical and Statutory Notes following § 36-501.
1981 Ed., § 29-724.

Legislative history of Law 11-28. — For

TITLE 37. WEIGHTS, MEASURES, AND MARKETS.

Chapter

1. Eastern Market Management and Regulation.
 - 1A. Vending Regulation.
2. Weights, Measures, and Markets Generally.

CHAPTER 1. EASTERN MARKET MANAGEMENT AND REGULATION.

Sec.	Sec.
37-101. Definitions.	37-108. Right of first refusal for existing side-walk operations.
37-102. Coordinated management.	37-109. Other neighborhood vending.
37-103. Enterprise Fund.	37-110. Enforcement.
37-104. Market operation.	37-111. Eastern Market Community Advisory Committee.
37-105. Market manager.	37-112. Insurance.
37-106. Eastern Market building and tenants.	37-113. Reporting requirements.
37-107. Right of first refusal for existing inside operations.	

§ 37-101. Definitions.

For the purpose of this chapter, the term:

(1) "Agricultural products" means vegetables, fruits, grains, mushrooms, honey, plants, plant cuttings, flowers, herbs, nuts, seeds, bulbs, and rootstock and includes baked or processed foods that are:

- (A) Processed in some way by the market vendor; and
- (B) Approved by the regulatory authorities.

(2) "Antiques" means items of personal property manufactured or made more than 100 years ago.

(3) "Artist" means an individual who created the works of art offered for sale and includes two or more individuals who work together in creating individual works of art offered for sale.

(4) "Center hall" means the 3,160 square feet of the Eastern Market building on the first and second floors that is between the South Hall and North Hall and which, on April 16, 1999, contained a pottery studio and bathrooms.

(5) "Chief Property Management Officer" ("CPMO") means the Chief Property Management Officer of the District of Columbia Office of Property Management.

(6) "Community Arts Center" means a space operated for the promotion of the arts including performances, exhibitions, sales, demonstrations and instruction.

(7) "Community group" means any District-based not-for-profit association or organization whose mission in some way serves the interests of the District's residents.

(8) "Compatible or complementary uses" means uses similar to the other permitted uses of Eastern Market Square or uses that would enhance and not detract from those uses.

(9) "Crafter" means an individual who created the hand-crafted goods offered for sale and includes two or more individuals who work together in creating individual hand-crafted goods offered for sale.

(10) "Eastern Market" means the building at Lot 800, Square 872 in the District of Columbia.

(11) "Eastern Market Community Advisory Committee" ("EMCAC"), means the advisory committee created in § 37-111.

(12) "Eastern Market special use area" means public land near Eastern Market Square, including but not limited to the playground and parking lot of Hine Junior High School and the Capitol Hill Natatorium Plaza.

(13) "Eastern Market Square" means the area between the south curb of North Carolina Avenue, S.E., and the north curb of C Street, S.E., and between the west curb of 7th Street, S.E., and the building line with the Capitol Hill Natatorium.

(14) "Eastern Market Tenants Council" means an Eastern Market tenants' group comprised of one representative of each major activity, including, but not limited to, the farmers, South Hall stall holders, Center Hall tenants, North Hall tenants, arts and crafts market vendors, and flea market vendors.

(15) "Farmer" means a market vendor who sells agricultural products, of which at least 70%, during the April-November harvest season was: (A) grown on land owned or leased by the market vendor; (B) grown on land neighboring the land owned or leased by the market vendor; (C) obtained directly from others who have grown the product on land which is owned or leased by the producer; or (D) in the non-harvest season of December-March, a market vendor who sells agricultural products in the harvest season, of which at least 30% was either (A), (B), or (C) of this paragraph.

(16) "Farmers' line" means that portion of the Eastern Market Square (under the existing shed) and extending north to North Carolina Avenue, S.E., and south of the shed along the sidewalk of 7th Street, S.E., to C Street, S.E., as well as the portion of the Eastern Market square between Eastern Market and the curb of C Street, S.E.

(17) "Food merchant" means a market vendor who sells agricultural products or prepared food, both home-grown and food obtained from wholesalers, but primarily from food wholesalers, to retail customers.

(18) "Food wholesaler" means vendors who sell agricultural products grown by themselves and others to a food merchant for resale to retail customers.

(19) "Hand-crafted goods" means items produced or created from raw or basic materials that are changed into a significantly different shape, design, form or function using a special skill, trade or manual art.

(20) "Importers of handcrafted and indigenous goods" means market vendors who sell items that are ethno-specific and are designed, produced and representative of the country of origin and purchased by the applicant in the country of origin or imported by the market vendor.

(21) "Market manager" means the not-for-profit association or corporation contracted to provide coordinated management for the Eastern Market Square and the individual or individuals designated to provide day-to-day management of the Eastern Market Square.

(22) "Market vendor" means an individual, association or corporation (including, but not limited to, any partnership, society, club, joint-stock company, estate, receiver, trustee, assignee, or referee, and any combination of individuals acting as a unit) with a currently enforceable contract or agreement with the market manager and engaged in selling any good in or about the Eastern Market Square and includes any artist, any crafter, any farmer and any merchant.

(23) "North Hall" means the 4,500 square feet of space on the ground floor of the North end of Eastern Market.

(24) "North Plaza" means that portion of Eastern Market Square bounded by the private right of way on the west, North Carolina Avenue, S.E., on the north, the Farmers' Line on the east, and the north face of the Eastern Market building on the south.

(25) "Office of Property Management" ("OPM") means the District of Columbia Office of Property Management.

(26) "Sidewalk market" means the areas, covered and uncovered, between the building and the street curbs on the south, east and north sides of the Eastern Market building on the Eastern Market Square.

(27) "Sidewalk market stall" means a sidewalk space of at least 32 square feet (normally eight feet by four feet) within which a market vendor is permitted to display and sell goods.

(28) "South Hall" means the 9,500 square feet of the ground floor and basement of the Eastern Market building at the southern end of the building closest to C Street, S.E.

(29) "Tenant" means an individual, association or corporation (including, but not limited to, any partnership, society, club, joint-stock company, estate, receiver, trustee, assignee, or referee, and any combination of individuals acting as a unit) but not limited to organizations and community groups having a written contract with the market manager to occupy space inside the Eastern Market building.

(30) "Vintage goods or collectibles" means any items of personal property previously purchased at retail.

(31) "Works of art" means drawings, paintings, sculptures, photographs, ornamental textiles, ornamental glass, ornamental pottery, and any other items created primarily for aesthetic appreciation.

(Apr. 16, 1999, D.C. Law 12-228, § 2, 46 DCR 1066; Apr. 20, 1999, D.C. Law 12-264, § 22(a), 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-301.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Eastern Market Emergency Amendment Act of 2008 (D.C. Act 17-570, November 7, 2008, 55 DCR 12114).

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10,

1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 12-228. — Law 12-228, the "Eastern Market Real Property Asset Management and Outdoor Vending Act of 1998," was introduced in Council and assigned Bill No. 12-477, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings

on June 2, 1998, and June 16, 1998, respectively. Signed by the Mayor on July 8, 1998, it was assigned Act No. 12-416 and transmitted to

both Houses of Congress for its review. D.C. Law 12-228 became effective on April 16, 1999.

§ 37-102. Coordinated management.

(a) The OPM shall supervise and provide coordinated management over all operations in the Eastern Market Square. On April 16, 1999, the District of Columbia shall notify any extant lessees and sub-assignees with an existing lease, contract, agreement or legally binding understanding with respect to any occupant or occupants of the Eastern Market building of the status of their lease or agreement, including the date of termination or expiration of their lease or sub-assignment or any other change to an agreement or legally binding understanding with the District of Columbia that is required by this chapter. The District of Columbia shall remain responsible for capital expenditures for Eastern Market and the Eastern Market Square.

(b) The CPMO may promulgate rules to implement this chapter.

(Apr. 16, 1999, D.C. Law 12-228, § 3, 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-302.
Legislative history of Law 12-228. — For

legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.

§ 37-103. Enterprise Fund.

(a) There is established the Eastern Market Enterprise Fund ("Fund"), an interest-bearing account, pursuant to § 47-373(2)(C). The Fund shall be operated by the CPMO in accordance with general accepted accounting principles.

(b) The CPMO shall deposit into the Fund all revenues, proceeds, and moneys from whatever source derived which are collected or received by the CPMO on behalf of Eastern Market. These revenues, proceeds, and moneys shall be credited to the Fund and shall not, at anytime, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, the Cash Management Pool, or any other funds or accounts of the District of Columbia, except for funds transferred to the District of Columbia Treasurer to pay all expenses related to the management and maintenance of the Eastern Market Square.

(c) All Eastern Market accounts shall be independently audited biennially by the District of Columbia Auditor, and the audit shall be submitted to the Mayor and the Council.

(Apr. 16, 1999, D.C. Law 12-228, § 4, 46 DCR 1066; Apr. 20, 1999, D.C. Law 12-264, § 22(b), 46 DCR 1066; Dec. 7, 2004, D.C. Law 15-205, § 1192(d), 51 DCR 8441.)

Prior Codifications. — 1981 Ed., § 10-303.

Effect of amendments. — D.C. Law 15-205, in subsec. (c), substituted "biennially" for "annually".

Emergency legislation. — For temporary (90 day) amendment of section, see § 1192(d) of

Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1192(d) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act

of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 12-228. — For legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 37-101.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support

Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

§ 37-104. Market operation.

Eastern Market shall be operated primarily as an indoor urban fresh food market and an outdoor Farmers’ Line, with a community arts center and public meeting space in the North Hall, with an arts and crafts market and a flea market on the North Plaza, and with compatible uses in the Center Hall.

(Apr. 16, 1999, D.C. Law 12-228, § 5, 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-304.
Legislative history of Law 12-228. — For

legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.

§ 37-105. Market manager.

(a) The CPMO shall consult with the EMCAC in preparing each request for proposals (“RFP”) which shall be issued by the District government for the selection of a market manager. The CPMO shall submit to the EMCAC each response to the market manager RFP for its review and recommendations. The CPMO shall consider the EMCAC’s recommendations in selecting a market manager.

(b) The CPMO shall contract, in accordance with the provisions of this chapter and Unit A of Chapter 3 of Title 2, with one not-for-profit association or corporation having experience operating an historic urban fresh food or farmers’ market, or experience relevant to the management of the activities described in subsection (c) of this section, and having access to sufficient working capital to manage and operate the Eastern Market Square on a self-sustaining basis as the market manager.

(1) The CPMO shall lease the Eastern Market Square, including the Eastern Market building and its public land and public space to the market manager who then may sublease by written contracts all or part of the building and public land and public space to one or more persons for use in accordance with this chapter. Existing leases, contracts, agreements, and legally binding understandings shall remain valid until the date of expiration or termination in accordance with the terms of the document, unless both parties agree otherwise. Pursuant to § 37-107, the sub-lease may be renewed under substantially similar terms, subject to the requirements set out in § 37-107.

(2) The market manager shall act as the lessor’s agent on any existing lease, contract, agreement, or legally binding understanding with respect to any occupant or occupants of the Eastern Market building.

(c) Any entity having an ownership, management or fiduciary interest in any activity subject to the management of the market manager shall be

ineligible to be selected as the market manager. Any entity selected as the market manager may not engage in retail or wholesale sales on the Eastern Market Square.

(d) Subject to review and advice by the EMCAC, the market manager shall manage and operate the Eastern Market Square to accomplish the following:

(1) Retain its historic character as a food market and farmers' sidewalk market while continuing the sale of arts, crafts, antiques, and other items that complement a farmers' sidewalk market;

(2) Maintain the Eastern Market Square and building;

(3) Protect the environment including the trees and tree boxes; and

(4) Ensure public health and safety.

(e) The market manager shall attend all public meetings of the EMCAC and shall consider the EMCAC's recommendations concerning the management of Eastern Market.

(f) The market manager shall prepare, prior to the start of each District government fiscal year budget preparation cycle, a budget for the annual operating expenses and any capital improvements that may be required, together with any necessary cost/benefit analyses, and shall submit this budget to the EMCAC for its review and recommendations at a public meeting. The market manager shall then submit this budget, along with the EMCAC's recommendations, to the CPMO, the Mayor and the Council for inclusion in the District of Columbia budget.

(g) The market manager shall keep copies or electronic backup, stored off-site, by hard copy or tape, of the following:

(1) All applications for sub-leases;

(2) All space sub-leases issued; and

(3) All receipts collected for space charges for 10 years from their issuance, and for any other revenue received from any lease or agreement to occupy or use any portion of the Eastern Market Square.

(h) The market manager shall make these copies available for public inspection in hard copy or disk format.

(i) Within 30 days of each September 30, and April 30, after April 16, 1999, the market manager shall prepare a written report of operations for the previous 6 months including a summary of revenues by source and of expenditures by kind and shall submit a copy of this report to the CPMO and the EMCAC.

(j) The market manager, in consultation with the Tenants Council and the EMCAC, shall determine days of operation and hours for buying and selling for the following: (1) the Eastern Market building; and (2) the sidewalk market.

(k) Buying and selling shall not be permitted on the sidewalk market, except with the prior written approval of the market manager.

(l) The market manager shall regulate the goods sold by the various tenants with the objective of maintaining a diverse fresh food market with specialty stands for meat, poultry and eggs, fish and seafood, dairy products, fruits and vegetables, baked goods, dry groceries, herbs and spices, delicatessen items, and cut flowers and potted plants.

(m) The market manager may enter into a written contract with a tenant or tenants to occupy the Center Hall for purposes that are consistent with and

supportive of other activities at Eastern Market and on the Eastern Market Square.

(n) The market manager shall direct that sidewalk market stalls be located on the North Carolina Avenue, 7th Street and C Streets sides of the Eastern Market building in a manner as to:

- (1) Maintain ingress to, and egress from, the Eastern Market Building;
- (2) Maintain access for fire fighters and to any fire hydrants;
- (3) Maintain passageways of at least 5 feet in width for use by the public;
- (4) Not obstruct the crosswalks on adjacent streets;
- (5) Not encroach on trees or tree boxes; and

(6) Not impede use of the private right-of-way, which is adjacent to the Capitol Hill Natatorium at 639 North Carolina Avenue, S.E.

(o) The market manager shall assign sidewalk market stalls by giving priority to the following:

(1) Throughout the week, to farmers and other market vendors of agricultural products, the sidewalk market stalls along the Farmers' Line. Farmers shall receive first priority and food merchants and wholesalers of agricultural products shall have second priority, except that market vendors of agricultural products granted a right of first refusal pursuant to § 37-108 shall have priority to a space of the same or comparable size, frequency, and location over farmers granted a right of first refusal; and

(2) On Saturday and Sunday, (A) to artists, crafters, and other market vendors of hand-crafted goods; imported goods that are ethno-specific and are designed, produced and representative of the country of origin; and works of art, during the Saturday arts-and-crafts festival, and (B) to market vendors of antiques or vintage goods or collectibles; hand-crafted goods; imported goods that are ethno-specific and are designed, produced and representative of the country of origin; and works of art, during the Sunday Flea Market, priority to the sidewalk market stalls on the North Plaza, except that market vendors granted a right of first refusal pursuant to § 37-108 shall have priority to a space of the same or comparable size, frequency, and location over market vendors not granted a right of first refusal.

(p) Before a stall assignment shall be issued, the applicant shall have obtained any required business license and sales and use tax number, except that no vendor's license shall be required, and shall have paid the market manager a uniform processing fee.

(q) Each day no fewer than 5 sidewalk market stalls shall be available for use or sales by one or more community groups who have first obtained a stall assignment from the market manager to occupy the stall or stalls.

(r) The market manager may reassign a sidewalk market stall that is unoccupied as of a time determined by the market manager to a market vendor awaiting a space assignment or, if there are none, to a market vendor already occupying another space.

(s) The market manager, in consultation first with the Tenants Council and then with the EMCAC, shall set a schedule of daily space charges for sidewalk market stalls. A new space charge shall not take effect without 30-days written notice prominently posted in the North and South Halls. The schedule of daily

space charges may provide a reduced daily space charge for occupying space Monday through Friday for market vendors paying a space charge on the preceding Saturday or Sunday.

(Apr. 16, 1999, D.C. Law 12-228, § 6, 46 DCR 1066; Apr. 20, 1999, D.C. Law 12-264, § 22(c), 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-305.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Eastern Market Emergency Amendment Act of 2008 (D.C. Act 17-570, November 7, 2008, 55 DCR 12114).

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 37-101.

Legislative history of Law 12-228. — For legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.

§ 37-106. Eastern Market building and tenants.

(a) Tenants shall not occupy any space or stand inside the Eastern Market building without first having entered into a written contract with the market manager.

(b) Each contract shall require that the tenant possess the required business license and sales and use tax number and comply with the laws, regulations and rules governing Eastern Market.

(c) Tenants may not stock or sell any class of item not specified on the tenant's written contract. Tenants may not sell food prepared for immediate consumption on the premises unless specifically authorized by the tenant's written contract.

(d) The market manager may enter into contracts with one or more tenants to sell and serve food prepared for immediate consumption on premises, but no more than 15% of the gross first floor space inside the Eastern Market building may be assigned for these purposes, except that no tenant selling or serving take-out food on August 1, 1997, shall be required to modify that tenant's operations as a result of the application of this provision. The market manager shall give priority to selling prepared foods typical of the Mid-Atlantic region, while encouraging a diversity of food offerings, and to tenants who are not affiliated with any franchise or chain fast-food organizations.

(e) The market manager may enter into a written contract with a tenant to operate the North Hall as a community arts center. The North Hall shall also be available for periodic use by community groups not involved in promoting the arts, and on a space-available basis, rented for fund-raising or for-profit activities. The contract shall specify a space charge that shall reflect rents or fees charged to art galleries, dance companies, theatrical companies and other similar arts-promoting entities, and to community-based or non-profit public activities.

(f) Community groups using the space for membership meetings or public forums, other than fundraising or other income-producing activities, shall be charged a nominal fee to compensate for administrative and security costs of the event.

(g) A tenant shall not occupy more space than is assigned to that tenant, and no alteration to stands or fixtures of any kind shall be made without the written approval of the market manager. Tenants shall keep and maintain

their space or stands in a manner satisfactory to the market manager. The market manager may specify the location where a tenant shall receive commodities and the doors through which commodities may be conveyed. Tenants shall dispose of all garbage and rubbish as directed by the market manager.

(h) Alcoholic beverages shall not be sold in the Eastern Market building except pursuant to the following:

- (1) An ABC license for special events; and
- (2) The written consent of the market manager.

(Apr. 16, 1999, D.C. Law 12-228, § 7, 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-306. legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.
Legislative history of Law 12-228. — For

§ 37-107. Right of first refusal for existing inside operations.

(a) Any individual, association or corporation having a lease, contract, agreement, or legally binding understanding to operate one or more stalls in the South Hall, a breakfast or lunch restaurant in the Center and South Hall, a pottery studio in the Center Hall, a community- and arts-related space in the North Hall as of August 1, 1997, shall be offered the right of first refusal to sub-lease under substantially similar terms, except that:

(1) The terms shall incorporate the provisions of this chapter and any regulations promulgated pursuant to it; and

(2) Rents or other financial arrangements shall reflect fair market rents and practices, but rents and fees for the operator of the North Hall shall take into account that certain activities will be charged only nominal fees.

(b) Annual rent increases for any operators shall be limited to 102% of the Consumer Price Index ("CPI"), or to an additional amount to reflect the cost of additional services provided, except that in no instance shall the annual increase exceed 110% of the CPI.

(Apr. 16, 1999, D.C. Law 12-228, § 8, 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-307. **Legislative history of Law 12-228.** — For legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.
Emergency legislation. — For temporary (90 day) amendment of section, see § 2(c) of Eastern Market Emergency Amendment Act of 2008 (D.C. Act 17-570, November 7, 2008, 55 DCR 12114).

§ 37-108. Right of first refusal for existing sidewalk operations.

(a) Any farmer or other market vendor of agricultural products who has operated one or more stalls on the sidewalk at any time within the last 2 years shall be offered a right of first refusal to continue such operations under substantially similar terms, except that:

- (1) The terms shall incorporate the provisions of this chapter and any

regulations promulgated pursuant to it, provided that the farmer or market vendor of agricultural products may continue to sell the type of goods sold during the 2-year period prior to April 16, 1999; and

(2) Space charges or other financial arrangements shall reflect fair market practices.

(b) Any non-food market vendor who, as of August 1, 1997, was a party to any arrangement to operate one or more stalls on the sidewalk shall have the right-of-first refusal to continue such operations under substantially similar terms, except that:

(1) The terms shall incorporate the provisions of this chapter and any regulations promulgated pursuant to it, provided that the non-food market vendor may continue to sell the type of goods being sold as of August 1, 1997; and

(2) Space charges or other financial arrangements shall reflect fair market practices.

(Apr. 16, 1999, D.C. Law 12-228, § 9, 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-308. legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.
Legislative history of Law 12-228. — For

§ 37-109. Other neighborhood vending.

(a) In order to maintain the theme and character of Eastern Market, any District of Columbia agency having jurisdiction over public property, including, but not limited to, the property under the jurisdiction of the District of Columbia Public Schools and the Department of Recreation and Parks, in the Eastern Market Special Use Area shall not permit retailing on such public property, except as generally is consistent with the activities at Eastern Market and with the prior written consent of the CPMO, after the review and comment of the market manager and the EMCAC, except that any contracts in place on August 1, 1997, shall be exempt from the provisions of this subsection.

(b) With the advice of the EMCAC, and after appropriate study, public hearing, and approval of the Department of Recreation and Parks, the market manager shall have the authority to extend operations and activities of the Eastern Market Square to the plaza in front of the Capitol Hill Natatorium.

(1) The CPMO shall not exercise this authority unless it is demonstrated there is sufficient demand from farmers, non-food market vendors, or the Sunday Flea Market vendors to create a viable extension of the Eastern Market Square.

(2) Any such extension shall not disturb the operations of the Capitol Hill Natatorium or impede the free flow of Natatorium users into and out of the building.

(Apr. 16, 1999, D.C. Law 12-228, § 10, 46 DCR 1066; Oct. 14, 1999, D.C. Law 13-49, § 14(a), 46 DCR 5153.)

Prior Codifications. — 1981 Ed., § 10-309. in subsec. (a), substituted “such” for “such
Effect of amendments. — D.C. Law 13-49, such”.

Legislative history of Law 12-228. — For legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.

Legislative history of Law 13-49. — Law 13-49, the “Criminal Code and Clarifying Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-61, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999,

respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 19, 1999.

References in text. — Pursuant to Mayor’s Order 2000-20, the agency formerly known as the Department of Recreation and Parks shall be known as the Department of Parks and Recreation.

§ 37-110. Enforcement.

In the event that a market vendor violates any law, regulation, sidewalk market rule or condition of the market vendor’s sub-lease as specified in the contract, the market manager may issue a market violation notice (“MVN”) to the market vendor suspending the market vendor’s sub-lease until the violation has been cured or corrected. If 3 MVNs are issued to a market vendor during the contract year, the market vendor’s sub-lease shall be cancelled. If the market manager decides not to renew a market vendor’s sub-lease, the market manager shall give the market vendor written notice on or before January 31. MVNs, cancellation, and any decision not to renew a market vendor’s sub-lease shall be effective immediately but may be appealed to the Office of Property Management.

(Apr. 16, 1999, D.C. Law 12-228, § 11, 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-310.
Legislative history of Law 12-228. — For

legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.

§ 37-111. Eastern Market Community Advisory Committee.

(a) There is hereby established the Eastern Market Community Advisory Committee (“EMCAC”) to be comprised of no more than 11 voting members. The EMCAC shall be comprised as follows:

- (1) Repealed.
- (2) One representative of ANC 6B, who shall be a serving ANC Commissioner;
- (3) One representative each of established, substantial Capitol Hill Community Organizations as follows:
 - (A) Capitol Hill Restoration Society, who, among other things, shall provide specific expertise in the area of historic preservation and land use policies;
 - (B) Capitol Hill Association of Merchants and Professionals, who, among other things, shall provide specific expertise relevant to business and retailing on Capitol Hill;
 - (C) Stanton Park Neighborhood Association;
 - (D) Eastern Market Preservation and Development Corporation, who, among other things, shall provide insights derived from its focus on Eastern Market issues; and
 - (E) Other organizations, which shall be determined upon a vote of 75%

of the EMCAC members, to have demonstrated substantial membership, broad Capitol Hill activity focus, and longevity of establishment sufficient to warrant a representative on the EMCAC, subject to the limit on the number of EMCAC members established in this section of this chapter.

(4) One independent community resident;

(5) One member who shall be a resident of Ward 6 and who is appointed by the Ward 6 member of the Council, to serve as a voting member;

(6) One member appointed by the Mayor, to serve as a voting member;

(7) Repealed.

(8) Two food market vendors, one from the merchants in the South Hall and the other from the farmer's line, and one non-food market vendor to be selected by those market vendors, respectively, each of whom serves as a voting member.

(b) Each member of the EMCAC shall represent, and be appointed or elected by his or her constituency, in accordance with its internal procedures except that the independent member, as set out in subsection (a)(4) of this section, shall be selected by the EMCAC for such membership after such positions are advertised to the community for no less than 30 days. The initial selection shall be made as soon as practicable after formation of the EMCAC.

(c) Members of the EMCAC shall serve for 2-year terms, except that the representative from ANC 6B shall not serve for any period longer than his or her service as a Commissioner. ANC 6B shall identify the EMCAC representative within 45 days after April 16, 1999. To create staggered terms, the initial non-ANC members shall determine by lot that half shall serve for one year.

(d) With the exception of the voting representatives of the food market vendors and non-food market vendors, no member of the EMCAC shall have an economic interest in, or fiduciary responsibility for, any business or other activity operated or conducted on the Eastern Market Square, or subject to control or regulation under this chapter.

(e) All members of the EMCAC shall serve without compensation. Direct expenses may be reimbursed according to policies to be determined by the EMCAC. The EMCAC may establish a bank account and receive and disburse funds.

(f) The members of the EMCAC shall meet no later than 45 days of April 16, 1999, and shall establish suitable bylaws governing its operations, including provisions for the election of a chair, vice-chair and other offices as deemed necessary. Within 90 days after December 7, 2004, the EMCAC shall revise its bylaws to be consistent with this chapter.

(g) The EMCAC shall have the following responsibilities:

(1)(A) Review and comment to the CPMO in preparing each RFP which shall be issued by the District of Columbia for the selection of a market manager; and

(B) Review and comment on all summaries of proposals received by the CPMO in response to each RFP and provide comments to the CPMO on the information reviewed by the EMCAC;

(2) Meet in public session at least quarterly to receive public comments on Eastern Market operations and activities;

(3) Review and comment in 30 days from the point that the EMCAC has notice on:

(A) The annual budget prepared by the market manager for the management of the Eastern Market Square;

(B) Any proposal by the market manager for an increase in the range of rates for vending on the sidewalk market;

(C) Any proposal for a capital improvement to the Eastern Market Square or the Eastern Market building; and

(D) Any proposal to expend monies from the Fund established in § 37-103 for the preservation and enhancement of Eastern Market and the Eastern Market Square; and

(4) Provide advice or comment to the market manager in the exercise of the market manager's responsibilities, for the purposes enumerated in this chapter and in regulations issued pursuant to this chapter, and specifically to provide for coordination among activities in the Eastern Market and on the Eastern Market Square, as provided for in this chapter and accompanying regulations.

(h) The EMCAC shall be involved in any Eastern Market renovation as follows:

(1) Any plan for the renovation or restoration of Eastern Market and the Eastern Market Square, including the Eastern Market building or Farmers' Line shed, shall comply with the standards for rehabilitation of historic buildings issued by the U.S. Secretary of the Interior and shall include comments by the EMCAC.

(2) The CPMO, with the advice of the EMCAC and the market manager, in accordance with the provisions of this chapter and Chapter 3 of Title 2, shall develop any RFP to be issued by the District government for the selection of any architects or contractors to work on Eastern Market or the Eastern Market Square. All contracts shall be awarded in accordance with the procedures in §§ 2620 through 2627 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements) except that the EMCAC's review shall be in addition to the architect-engineer evaluation board. The EMCAC shall review and comment on each proposal received in response to each RFP and shall comment on the proposals to the CPMO for final selection. Any EMCAC member with a personal or financial connection, or with an immediate family member with a personal or financial connection to any person or entity submitting a proposal, or to any contractor or subcontractor shall take no part in considering, evaluating, or recommending that or competing proposals, or that of any contractor or subcontractor.

(i) The EMCAC shall create at least two standing committees as follows:

(1) A Tenants Council comprised of one representative of each major activity, including, but not limited to, the farmers, South Hall stall holders, Center Hall tenants, North Hall tenants, arts and crafts market vendors, and flea market vendors. The Tenants Council shall meet regularly, and shall appoint a chair to conduct its meetings. The Tenants Council may report from time to time to the EMCAC and to the market manager. The Tenants Council and the market manager shall work together to arrange off-site parking for

tenants and market vendors. The Tenants Council shall assist the market manager in evaluating and amending standards for the conduct of operations and activities at Eastern Market and the Eastern Market Square.

(2) An Application Advisory Review Subcommittee, which shall be composed of experts, drawn as appropriate from existing farmers, merchants, and market vendors, to meet as necessary to evaluate applications for annual sidewalk sub-leases for conformity to criteria for sub-lease priority with respect to farmers, artists, crafters and other market vendors. Sub-leases may be issued provisionally by the market manager pending the review and advice of the Application Advisory Review Subcommittee.

(j) Subject to the provisions of this chapter and relevant regulation, the EMCAC may propose, and shall review and advise on recommendations by the market manager, to amend standards, operational guidelines, and rules for the conduct of operations and activities at Eastern Market and the Eastern Market Square. In making proposals, or considering recommendations, the market manager and the EMCAC shall take into account:

- (1) Preserving the historic character and atmosphere of Eastern Market and the Eastern Market Square;
- (2) Community opinion; and
- (3) The goal of Eastern Market economic self-sufficiency.

(k) Provided the Mayor or his designee approves gifts and donations, the EMCAC may promote and seek outside funding for the preservation and enhancement of Eastern Market and the Eastern Market Square, through fund-raising events, contributions, grants, sales, the establishment of an endowment and other appropriate activities. Any funds raised in this way shall be deposited into the Fund.

(Apr. 16, 1999, D.C. Law 12-228, § 12, 46 DCR 1066; Apr. 20, 1999, D.C. Law 12-264, § 22(d), 46 DCR 1066; Oct. 14, 1999, D.C. Law 13-49, § 14(b), 46 DCR 5153; June 19, 2001, D.C. Law 13-313, § 11, 48 DCR 1873; Dec. 7, 2004, D.C. Law 15-195, § 2, 51 DCR 7590.)

Prior Codifications. — 1981 Ed., § 10-311.

Effect of amendments. — D.C. Law 13-49, in par. (a)(3), added subpar. (C).

Subsection 14(c) of D.C. Law 13-49 provided: "This section shall apply as of April 16, 1999."

D.C. Law 13-313, in subsec. (e), added "The EMCAC may establish a bank account and receive and disburse funds."

D.C. Law 15-195, in subsec. (a), repealed par. (1), rewrote pars. (5) and (6), repealed par. (7), and rewrote par. (8); rewrote subsec. (c); in subsec. (d), substituted "With the exception of the voting representatives of the food market vendors and non-food market vendors," for "With the exception of the non-voting representative of the Tenants Council and the voting representatives of the food market vendors and non-food market vendors,"; in subsec. (f), added a new sentence at the end; and in par. (1) of subsec. (i), deleted "and one member to represent the Tenants Council as a non-voting mem-

ber on the EMCAC" following "appoint a chair to conduct its meetings".

Temporary Amendment of Section. — Section 2 of D.C. Law 15-60, repealed subsec. (a)(1); and rewrote subsec. (c) to read as follows:

"Members of the EMCAC shall serve for 2-year terms, except that the representative from ANC 6B shall not serve for any period longer than his or her service as a Commissioner. ANC 6B shall identify the EMCAC representative. To create staggered terms, the initial non-ANC members shall determine by lot that half shall serve for one year."

Section 4(b) of D.C. Law 15-60 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Eastern Market Emergency Amendment Act of 2003 (D.C. Act 15-116, July 29, 2003, 50 DCR 6594).

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 37-101.

Legislative history of Law 12-228. — For legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.

Legislative history of Law 13-49. — For Law 13-49, see notes following § 37-109.

Legislative history of Law 13-313. — Law 13-313, the “Technical Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-879, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-574 and transmitted to both Houses of Congress for its review. D.C. Law 13-313 became effective on June 19, 2001.

Legislative history of Law 15-60. — Law 15-60, the “Eastern Market Temporary Amend-

ment Act of 2003”, was introduced in Council and assigned Bill No. 15-322, and was retained by Council. The Bill was adopted on first and second readings on July 8, 2003, and September 16, 2003, respectively. Signed by the Mayor on October 6, 2003, it was assigned Act No. 15-179 and transmitted to both Houses of Congress for its review. D.C. Law 15-60 became effective on December 9, 2003.

Legislative history of Law 15-195. — Law 15-195, the “Eastern Market Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-316, which was referred to the Subcommittee on Human Rights, Latino Affairs and Property. The Bill was adopted on first and second readings on June 1, 2004, and June 29, 2004, respectively. Signed by the Mayor on July 19, 2004, it was assigned Act No. 15-469 and transmitted to both Houses of Congress for its review. D.C. Law 15-195 became effective on December 7, 2004.

§ 37-112. Insurance.

(a) The market manager shall maintain appropriate liability insurance. The market manager shall require each tenant and market vendor to maintain liability insurance, individually or as part of a group policy.

(b) The market manager, each tenant and each market vendor shall indemnify and hold harmless the District of Columbia from any liability arising out of each tenant’s or market vendor’s and market manager’s respective activity.

(Apr. 16, 1999, D.C. Law 12-228, § 13, 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-312.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(d) of Eastern Market Emergency Amendment Act of 2008 (D.C. Act 17-570, November 7, 2008, 55 DCR 12114).

Legislative history of Law 12-228. — For legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.

§ 37-113. Reporting requirements.

No later than January 2, 2004, the CPMO shall file a report with the Council for review. The report shall contain information including, but not limited to, a report on the operations and management of Eastern Market for the past 5 year period, financial operations, a summary of all contractual activities, and an assessment of management operations including EMCAC functions and procedures and a report on the Market’s capital status and needs.

(Apr. 16, 1999, D.C. Law 12-228, § 14, 46 DCR 1066.)

Prior Codifications. — 1981 Ed., § 10-313.

Legislative history of Law 12-228. — For

legislative history of D.C. Law 12-228, see Historical and Statutory Notes following § 37-101.

CHAPTER 1A. VENDING REGULATION.

Sec.	Sec.
37-131.01. Definitions.	37-131.07. Fees and funding.
37-131.02. Vending from public space.	37-131.08. Penalties.
37-131.03. Vending locations.	37-131.09. Establishment of the Citywide Vending Task Force.
37-131.04. Assignment of vending locations.	37-131.10. Rules.
37-131.05. Vending development zones.	
37-131.06. Public markets.	

§ 37-131.01. Definitions.

For the purposes of this chapter, the term:

(1) “Fund” means the Vending Regulation Fund established by § 37-131.07(b).

(2) “Public market” means a vending operation that takes place in an area of public space set aside and permitted on a regular basis for the sale of goods, merchandise, or services provided onsite, which vending operation includes a farmers market, flea market, or antique market.

(3) “Vending locations” means the specific locations designated by the Mayor on sidewalks, roadways, and other public space at which a person may vend.

(4) “Vending site permit” means a permit or other authorization issued by the Mayor for a vending location.

(Oct. 22, 2009, D.C. Law 18-71, § 2, 56 DCR 6619.)

Temporary Amendment of Section. — Section 2(a) of D.C. Law 19-144 added pars. (1A) and (2A) to read as follows:

“(1A) ‘Healthy food vendor’ means a vendor that sells only unprocessed, unfrozen, whole, raw fruits and vegetables that have not been combined with other ingredients; provided, that the Mayor, by rule, may expand this definition to include other healthy food items.”.

“(2A) ‘Underserved area’ means a historically underutilized business zone, as defined by section 3(p)(1) of the Small Business Act, approved July 18, 1958 (72 Stat. 384; 15 U.S.C. § 632(p)(1)).”.

Section 5(b) of D.C. Law 19-144 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

For temporary (90 day) amendment of section, see § 2(a) of Fresh Healthy Mobile Cart Vending Pilot in Underserved Areas Emergency Amendment Act of 2012 (D.C. Act 19-325, March 18, 2012, 59 DCR 2261).

Legislative history of Law 18-71. — Law 18-71, the “Vending Regulation Act of 2009”, as introduced in Council and assigned Bill No. 18-257, which was referred to the Committee on Public Services and Consumer Affairs. The bill was adopted on first and second readings on June 30, 2009, and July 14, 2009, respectively. Signed by the Mayor on July 28, 2009, it was assigned Act No. 18-167 and transmitted to both Houses of Congress for its review. D.C. Law 18-71 became effective on October 22, 2009.

Delegation of Authority. — Transfer of Authority for Vending Regulation, see Mayor’s Order 2009-106, June 16, 2009, (56 DCR 6853).

§ 37-131.02. Vending from public space.

(a) Except as set forth in subsection (b) of this section, a person shall not vend from a sidewalk, roadway, or other public space unless the person holds:

(1) A basic business license properly endorsed as provided in subsection (c) of this section;

(2) A vending site permit, or other authorization issued by the Mayor, setting forth the specific location on public space from which the person may vend; and

(3) Such other licenses, permits, and authorizations that the Mayor may require by rule.

(b) The Mayor may authorize the following persons to vend from public space without a basic business license or vending site permit:

(1) An employee or youth assistant of a licensed vendor;

(2) A person vending at a licensed special event; and

(3) A person vending at a public market that has been issued a valid permit by the Mayor.

(c)(1) An endorsement to vend food pursuant to this chapter shall be issued as a Food Establishments: Retail endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47 [§ 47-2851.01 et seq.].

(2) An endorsement to vend merchandise or engage in street photography pursuant to this chapter shall be issued as a General Sales endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47 [§ 47-2851.01 et seq.].

(Oct. 22, 2009, D.C. Law 18-71, § 3, 56 DCR 6619.)

Emergency legislation. — For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) addition, see § 10(a)

of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

Legislative history of Law 18-71. — For Law 18-71, see notes following § 37-131.01.

Delegation of Authority. — Delegation of Authority Pursuant to the Vending Regulation Act of 2009, see Mayor's Order 2010-91, June 4, 2010 (57 DCR 4911).

CASE NOTES

ANALYSIS

Construction and application.
Freedom of speech.

Construction and application.

District of Columbia statute and regulations, requiring that sidewalk vendor who displayed, discussed, and sold political buttons, obtain a vending license and permit to vend at a specific site, were narrowly tailored to serve governmental interests in ensuring orderly flow of vehicular and pedestrian traffic, relieving street and sidewalk congestion, promoting public safety, and facilitating tourism and commerce, as required to constitute a valid time, place, and manner restriction on vendor's free speech rights in public forum, despite other restrictions which governed vending activity, and even though regulation made no distinc-

tion between large groups and individuals, gave District 45 days in which to inform applicant of grant or denial of application, and only required that site permit lottery be held every two years; even a single vendor could affect District's interest in orderly flow of traffic since such vendors were expected to occupy sidewalk space for extended periods of time, other regulations served different purposes than did site permit requirement, and waiting periods did not limit vendor's First Amendment right to speak out in a timely manner, but only his ability to sell the buttons in question. *Enten v. Dist. of Columbia*, 675 F.Supp.2d 42, 2009 U.S. Dist. LEXIS 118983 (2009).

Freedom of speech.

Street vendor's asserted fear of arrest and citation for selling buttons without a license was sufficient to demonstrate an imminent

injury, as required to seek preliminary injunction against District of Columbia's vending statute and regulations on free speech grounds; on numerous occasions, officers had approached vendor and inquired whether he had a license, on one occasion, vendor was arrested, hand-

cuffed, and taken into custody, and on others, vendor had complied with the orders of the police to cease and desist. *Enten v. Dist. of Columbia*, 675 F.Supp.2d 42, 2009 U.S. Dist. LEXIS 118983 (2009).

§ 37-131.03. Vending locations.

(a) The Mayor shall designate the specific vending locations on sidewalks, roadways, and other public spaces where a person may vend.

(b) A person shall not vend from a location on a sidewalk, roadway, or other public space other than a vending location designated by the Mayor unless the person is vending at a special event or public market that has been issued a valid license or permit by the Mayor; provided, that notwithstanding any other provision of this chapter, vending locations established pursuant to section 6(c-1)(3) of the Vending Regulation Temporary Act of 2008, effective June 5, 2008 (D.C. Law 17-172; 55 DCR 9144), and the District of Columbia Department of Transportation and Department of Consumer and Regulatory Affairs Vending Consolidation of Public Space and Licensing Authorities Temporary Act of 2006, effective March 8, 2007 (D.C. Law 16-252; 54 DCR 631), shall remain designated vending locations unless:

(1) The space is to be used for a public purpose, including a roadway or public transportation needs, or to protect public safety; or

(2) The use of the real property in the immediate vicinity of the vending location changes and the Mayor determines, in his or her reasonable discretion, that the vending location is incompatible with such use.

(c) No more than 350 vending locations shall be established in Ward 2 at any time; provided, that vending locations on the National Mall shall not be included in this limitation.

(d) An authorization from the Mayor shall not be required for vending activities subject to § 5-331.05(h).

(Oct. 22, 2009, D.C. Law 18-71, § 4, 56 DCR 6619.)

Temporary Amendment of Section. — Section 2(b) of D.C. Law 19-144, in subsec. (c), substituted “provided, that vending locations on the National Mall and healthy food vendors located in underserved areas shall not be included in this limitation” for “provided, that vending locations on the National Mall shall not be included in this limitation”.

Section 5(b) of D.C. Law 19-144 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2009

(D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

For temporary (90 day) amendment of section, see § 2(b) of Fresh Healthy Mobile Cart Vending Pilot in Underserved Areas Emergency Amendment Act of 2012 (D.C. Act 19-325, March 18, 2012, 59 DCR 2261).

Legislative history of Law 18-71. — For Law 18-71, see notes following § 37-131.01.

Delegation of Authority. — Delegation of Authority Pursuant to the Vending Regulation Act of 2009, see Mayor's Order 2010-91, June 4, 2010 (57 DCR 4911).

§ 37-131.04. Assignment of vending locations.

(a) A vendor shall not vend from a vending location without first obtaining a vending site permit from the Mayor.

(b) Vending locations shall be assigned by lotteries conducted by the Mayor, unless:

(1) The Mayor establishes an alternate means of assignment by rule;

(2) The vending location is located in a vending development zone, in which case the vending location may be assigned by lottery or such other means as may be established for the vending development zone; or

(3)(A) The vending location was permitted pursuant to the District of Columbia Department of Transportation and Department of Consumer and Regulatory Affairs Vending Consolidation of Public Space and Licensing Authorities Temporary Act of 2006, effective March 8, 2007 (D.C. Law 16-252; 54 DCR 631), and was assigned to an existing, licensed vendor.

(B) A vending location identified in subparagraph (A) of this paragraph shall remain assigned to the existing, licensed vendor; provided, that the vendor's license status remains in effect and in good standing.

(c) Vendors who are licensed as of October 22, 2009, and had been, at any time, assigned a vending location pursuant to section 6(c-1)(3) of the Vending Regulation Temporary Act of 2008, effective June 5, 2008 (D.C. Law 17-172; 55 DCR 5377), shall be given a preference in lotteries conducted by the Mayor for assigning those vending locations. The lotteries shall be conducted monthly or on an alternative schedule as determined by the Mayor.

(d) Notwithstanding any provision of this section, a vending site permit shall constitute a revocable license and a vendor shall not acquire a property interest in the vending site permit.

(Oct. 22, 2009, D.C. Law 18-71, § 5, 56 DCR 6619.)

Temporary Amendment of Section. — Section 2(c) of D.C. Law 19-144 added subsec. (b-1) to read as follows:

“(b-1) Notwithstanding subsection (b) of this section, the Mayor may issue up to 15 vending site permits to healthy food vendors located in underserved areas; provided, that if a vendor receiving a vending site permit ceases to be a healthy food vendor, the Mayor shall revoke the permit”.

Section 5(b) of D.C. Law 19-144 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

For temporary (90 day) amendment of section, see § 2(c) of Fresh Healthy Mobile Cart Vending Pilot in Underserved Areas Emergency Amendment Act of 2012 (D.C. Act 19-325, March 18, 2012, 59 DCR 2261).

Legislative history of Law 18-71. — For Law 18-71, see notes following § 37-131.01.

§ 37-131.05. Vending development zones.

The Mayor may establish vending development zones, upon application and after public notice, in which the Mayor may waive the regulatory provisions, such as the design standards, the standards for designation of vending

locations, and the procedure for assigning vending locations, otherwise applicable to vendors; provided, that the Mayor shall establish, by rule, a procedure for reviewing applications for the establishment of a vending development zone.

(Oct. 22, 2009, D.C. Law 18-71, § 6, 56 DCR 6619.)

Emergency legislation. — For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

Legislative history of Law 18-71. — For Law 18-71, see notes following § 37-131.01.

§ 37-131.06. Public markets.

The Mayor may require the permitting of public markets on public space and may require the licensing of managers of public markets on public space and private space.

(Oct. 22, 2009, D.C. Law 18-71, § 7, 56 DCR 6619.)

Emergency legislation. — For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

Legislative history of Law 18-71. — For Law 18-71, see notes following § 37-131.01.

§ 37-131.07. Fees and funding.

(a) The Mayor may establish fees, by rule, for the application for, and issuance of, each license, permit, and authorization required under this chapter or the rules issued pursuant to this chapter. The Mayor may establish the fees based on the class of license, vending location, or other relevant factors.

(b)(1) There is established as a nonlapsing fund the Vending Regulation Fund, which shall be used solely for the purposes set forth in paragraph (4) of this subsection.

(2) The following shall be deposited into the Fund:

(A) Fees paid for the application for, and issuance or renewal of, a basic business license endorsed for vending;

(B) Fees paid for the application for, and issuance or renewal of, a vending site permit or other licenses, permits, or authorizations issued by the Mayor under this chapter;

(C) Funds authorized by an act of Congress, reprogramming, or intra-District transfer to be deposited into the Fund;

(D) Any other funds designated by law or rule to be deposited into the Fund; and

(E) Interest on funds deposited in the Fund.

(3) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in paragraph (4) of this subsection, subject to authorization by Congress.

(4) Funds in the Fund may be used to pay the costs of administering this chapter, including costs associated with the application for, and issuance and renewal of, a basic business license as set forth in paragraph (2)(A) of this subsection, and the administration and enforcement of any rules issued under this chapter.

(Oct. 22, 2009, D.C. Law 18-71, § 8, 56 DCR 6619.)

Emergency legislation. — For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

Legislative history of Law 18-71. — For Law 18-71, see notes following § 37-131.01.

§ 37-131.08. Penalties.

The Mayor may establish civil penalties for the violation of this chapter and rules promulgated pursuant to this chapter, including the establishment of civil penalties pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(Oct. 22, 2009, D.C. Law 18-71, § 9, 56 DCR 6619.)

Emergency legislation. — For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

Legislative history of Law 18-71. — For Law 18-71, see notes following § 37-131.01.

§ 37-131.09. Establishment of the Citywide Vending Task Force.

(a) Within 30 days after October 22, 2009, the Mayor shall create and convene the Citywide Vending Task Force (“Task Force”), consisting of representatives from the street vendor, small business, downtown business, and other affected communities, including District residents.

(b) The Task Force shall evaluate existing vending laws and rules to ensure maximum comprehensiveness, uniformity, and fairness for all stakeholders. Specifically, the Task Force shall consider issues of grandfather clauses, insurance fees, lottery selection, and possible clarification of existing grounds of revocation of a vending license.

(c) Within 120 days after October 22, 2009, the Task Force shall conclude its

work by presenting a report and recommendation to the Council on its specific findings, including a legislative recommendation on whether to establish a permanent vending commission.

(Oct. 22, 2009, D.C. Law 18-71, § 10, 56 DCR 6619.)

Emergency legislation. — For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2008 (D.C. Act 17-322, March 19, 2008, 55 DCR 3445).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Emergency Act of 2009 (D.C. Act 18-9, January 29, 2009, 56 DCR 1638).

For temporary (90 day) addition, see § 10(a) of Vending Regulation Congressional Review Emergency Act of 2009 (D.C. Act 18-47, April 27, 2009, 56 DCR 3574).

Legislative history of Law 18-71. — For Law 18-71, see notes following § 37-131.01.

§ 37-131.10. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement this chapter, including rules regulating the location, the design, and the maintenance of vendor carts, stands, vehicles, and other equipment, and rules requiring that persons vending from public space maintain insurance in such form and amount as may be required by the Mayor. The proposed rules shall be submitted to the Council for a 60-day period of review, excluding weekends, holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within the 60-day review period, the proposed rules shall be deemed disapproved.

(Oct. 22, 2009, D.C. Law 18-71, § 11, 56 DCR 6619.)

Legislative history of Law 18-71. — For Law 18-71, see notes following § 37-131.01.

CHAPTER 2. WEIGHTS, MEASURES, AND MARKETS GENERALLY.

Subchapter I. Weights and Measures Generally

Sec.

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Sec.

- 37-201.18. Standard liquid measures; automatic gasoline pumps.
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- 37-201.20. Automatic measuring pumps.
- 37-201.21. Sale of pro rata quantity.
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- 37-201.26. [Repealed].
- 37-201.27. Powers and duties of Director conferred on assistants and inspectors.
- 37-201.28. Supervision of markets; investigations and reports.
- 37-201.29. "Mayor" and "Director" defined.
- 37-201.30. "Person" defined; meaning of singular words.
- 37-201.31. Severability.
- 37-201.32. Penalties; conduct of prosecutions.
- 37-201.33. Registration and inspection fees for weighing and measuring devices.

Subchapter II. Definition of "Barrel of Corn."

- 37-203.01. "Barrel of corn" defined.

Subchapter III. Markets Generally

- 37-205.01. Supervision of municipal fish market.
- 37-205.02. Markets; disposition of receipts; charges.

Subchapter I. Weights and Measures Generally.

§ 37-201.01. Department of Weights, Measures, and Markets created; appointment of Director, assistants and employees.

(a) There is hereby created an executive department in the government of the District of Columbia which shall be known as the Department of Weights, Measures, and Markets. Such Department shall be in charge of a Director of Weights, Measures, and Markets, who shall be appointed by and be under the direction and control of the Mayor of the District of Columbia. He shall have the custody and control of such standard weights and measures of the United States as are now or shall hereafter be provided by the District of Columbia, which shall be the only standards for weights and measures in said District.

(b) The Mayor is also authorized to appoint, on the recommendation of the

Director, such assistants, inspectors, and other employees for which Congress may, from time to time, provide.

(Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 1; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Cross references. — Annual estimate of salaries, see § 47-207.

Council's authority to promulgate regulations, see § 47-2844.

Council's authority to regulate, modify or eliminate license requirements, see § 47-2842.

Prior Codifications. — 1981 Ed., § 10-101. 1973 Ed., § 10-101.

Editor's notes. — Department of Weights, Measures and Markets abolished: The Department of Weights, Measures, and Markets was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, established under the direction and control of a Commissioner a Department of Licenses and Inspection, set out the purpose, organization, and functions of the Department, established the Inspection Division to administer and enforce the standard weights and measures law, transferred to the Department the functions and positions of the Department of Weights, Measures, and Markets and abolished the latter Department in accordance with the provisions of 1952 Reorganization Plan No. 5. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. The functions vested in the Department of Licenses and In-

spectations by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order 78-42, dated February 17, 1978, which Order established the Department of Licenses. Investigation and Inspections.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-201.02. Director to give bond and take oath.

The Director shall, before entering upon the performance of his duties, give bond to the District of Columbia in the penal sum of \$5,000, signed by 2 sureties or by a bonding company, to be approved by the Mayor, conditioned on the faithful discharge of the duties of his office, and shall take and subscribe an oath or affirmation before the Mayor that he will faithfully and impartially discharge the duties of his office, which bond and oath shall be deposited with the Mayor.

(Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 2; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-103. 1973 Ed., § 10-102.

Editor's notes. — Department of Weights, Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-201.03. Exclusive powers of Director; examination of measuring devices; condemnation; charges by Mayor.

(a) The Director and, under his direction, his assistants and inspectors, shall have exclusive power to perform all the duties provided in this subchapter. They shall, at least every 6 months, and oftener when the Director thinks proper, inspect, test, try, and ascertain whether or not they are correct, all weights, scales, beams, measures of every kind, instruments or mechanical devices for weighing or measuring, and all tools, appliances, or accessories connected with any or all such instruments or mechanical devices for weighing or measuring used or employed in the District of Columbia by any owner, agent, lessee, or employee in determining the weight, size, quantity, extent, area, or measurement of quantities, things, produce, or articles of any kind offered for transportation, sale, barter, exchange, hire, or award, or the weight of persons for a charge or compensation, and shall approve and seal, stamp, or mark, in the manner prescribed by the Council of the District of Columbia, such devices or appliances as conform to the standards kept in the Office of the Director, and shall seize and destroy or mark, stamp, or tag with the word “condemned” such as do not conform to the standards, and shall also mark the date of such condemnation upon the same. Any weight, scale, beam, measure, weighing or measuring device of any kind which shall be found to be unsuitable for the purpose for which it is intended to be used or of defective construction or material shall be condemned. No person shall use or, having the same under his control, shall permit to be used for any of the purposes enumerated in this subchapter any weight, scale, beam, measure, weighing or measuring device whatsoever unless the same has been approved in accordance with the provisions of this subchapter within 6 months prior to such use, or that does not conform to the standards kept in the Office of the Director of Weights, Measures, and Markets, or that does not bear the approval seal, stamp, or mark prescribed by the Council, or which, having been condemned, has not thereafter been approved as provided in this subchapter.

(b) Any person who shall acquire or have in his possession after March 3, 1921 any scale, weighing instrument, or nonportable measure or measuring device, subject to inspection or test under the provisions of this subchapter, which has not been approved in accordance with the provisions of this subchapter within 6 months prior to acquisition or possession and which does not bear the approval seal, stamp, or mark prescribed by the Council, shall notify the Director in writing at his office, giving a general description thereof, and the street and number or other location where same may be found, and it

shall be the duty of the Director to cause the same to be inspected and tested within a reasonable time after receipt of such notice. Any person who shall acquire or have in his possession after March 3, 1921, any portable measure or measuring device, subject to inspection or test under the provisions of this subchapter, which has not been approved in accordance with the provisions of this subchapter within 6 months prior to acquisition or possession and which does not bear the approval seal, stamp, or mark prescribed by the Council shall cause the same to be taken to the Office of the Director for inspection and test.

(c) Every peddler, hawker, huckster, transient merchant, or other person with no fixed or established place of business shall, before using any weight, scale, measure, weighing or measuring device for any of the purposes enumerated in this subchapter, cause the same to be taken to the Office of the Director for inspection and test semiannually, and shall not use for the purposes herein mentioned any weight, scale, measure, weighing or measuring device which has not been approved within 6 months prior to the time of such use, and does not bear the approval seal, stamp, or mark prescribed by the Council.

(d) The Mayor of the District of Columbia shall make a charge of \$15 per hour, per person, for the examination, inspection, and sealing and for the reinspection on recalls due to condemnations of the following weighing and measuring equipment used or owned by agencies of the federal government and by private suppliers under contract to departments of the District of Columbia government:

- (1) Vehicle type scales;
- (2) Hopper type scales;
- (3) Hanging Spring type scales — 20 pounds or less;
- (4) Hanging Spring type scales — over 20 pounds;
- (5) Computing scales, conventional;
- (6) Computing scales, prepacked;
- (7) Counter scales, except counter platform;
- (8) Counter platform;
- (9) Platform scales — up to 500 pounds;
- (10) Platform scales — over 500 pounds;
- (11) Crane scales;
- (12) Dormant type scales — over 10,000 pounds;
- (13) Dormant type scales — 2,000 to 10,000 pounds;
- (14) Dormant type scales — up to 2,000 pounds;
- (15) Personal weighing scales, including physician type;
- (16) Prescription scales, types A, B, C, including weights;
- (17) Analytical balances, including chain-o-matic type and weights;
- (18) Jewelry scales;
- (19) Abattoir scales;
- (20) Butcher beam;
- (21) Gasoline pumps;
- (22) Liquid measures up to 5 gallons;
- (23) Meters on trucks used for petroleum products; and
- (24) Bulk plant meters.

(Mar. 3, 1921, 41 Stat. 1217, ch. 118, § 3; Apr. 27, 1945, 59 Stat. 96, ch. 99, § 1;

Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; Aug. 14, 1982, D.C. Law 4-136, § 2, 29 DCR 2754.)

Cross references. — Adulteration of food and drugs, see § 48-101 et seq.

Disposition of fees, see § 47-127.

Prior Codifications. — 1981 Ed., § 10-104. 1973 Ed., § 10-103.

Legislative history of Law 4-136. — Law 4-136, the “District of Columbia Weighing and Measuring Equipment Inspection Charge Act of 1982,” was introduced in Council and assigned Bill No. 4-385, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on May 25, 1982 and June 8, 1982, respectively. Signed by the Mayor on June 21, 1982, it was assigned Act No. 4-202 and transmitted to both Houses of Congress for its review.

Editor’s notes. — Department of Weights, Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(194) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-201.04. Inspection required after repair; alteration of condemnation tag prohibited.

No person shall use or, having the same under his control, permit to be used, any weight, scale, measure, weighing or measuring device, or any attachment or part thereof after the same has been altered or repaired without the same having been inspected and approved as provided in this subchapter after such alterations or repairs have been made, and no persons shall alter, obliterate, detach, obscure, or conceal any condemnation seal, stamp, mark, tag, or label, attached or impressed by the Director or any of his assistants or inspectors, without written permission of the Director.

(Mar. 3, 1921, 41 Stat. 1218, ch. 118, § 4; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-105. 1973 Ed., § 10-104.

Editor’s notes. — Department of Weights,

Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

§ 37-201.05. Obstruction of inspection prohibited.

No person shall neglect, fail, or refuse to exhibit any weight, scale, beam, measure, weighing or measuring device, subject to inspection or test under the provisions of this subchapter, to the Director or any of his assistants or inspectors for the purpose of inspection and test and no persons shall in any manner obstruct, hinder, or molest the Director or any of his assistants, inspectors, or other employees in the performance of their duties.

(Mar. 3, 1921, 41 Stat. 1218, ch. 118, § 5; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-106.
1973 Ed., § 10-105.

Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Editor's notes. — Department of Weights,

§ 37-201.06. Record of inspections.

The Director shall keep in his office a record of weighing and measuring devices inspected, which record shall show the type of device, the name and address of the owner, the date of inspection, and whether the same was approved or condemned. Such record shall be open to the public during regular office hours.

(Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 6; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-107.
1973 Ed., § 10-106.

Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Editor's notes. — Department of Weights,

§ 37-201.07. False measure prohibited; sale of commodities.

No person shall sell, offer for sale, keep, or expose for sale anywhere in the District of Columbia any commodity of any kind as a weight, measure, or numerical count greater than the actual or true weight, measure, or numerical count thereof, and no person shall take or attempt to take more than the actual and true weight, measure, or numerical count of any commodity, when, as buyer, he is permitted by the seller to determine the weight, measure, or numerical count thereof. No person shall charge or collect for any commodity or commodities a sum greater than the price or prices indicated or quoted at the time of sale. No person shall charge, collect, or accept any money for any commodity which he shall not have delivered or which he shall not have agreed to deliver. When a whole number or fraction, or both, are used in representing the price or quantity of any commodity, thing, or service offered or exposed for sale, such number or combination of numbers shall be of such size as to indicate clearly the price or quantity of such commodity, thing or service.

(Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 7; Apr. 27, 1945, 59 Stat. 97, ch. 99, § 2.)

Prior Codifications. — 1981 Ed., § 10-108.

1973 Ed., § 10-107.

CASE NOTES

In general.

Where customer, after being told price per pound of chickens, asked for a chicken or chickens weighing around three or four pounds, and after they were weighed was told that they came to \$1.46, the jury were warranted in finding there was an implied representation as

to their weight within statute prohibiting sale of commodity as weight greater than actual weight. D.C. Code 1929, T. 28, § 7. *Great Atlantic & Pacific Tea Co. v. District of Columbia*, 89 F.2d 502, 1937 U.S. App. LEXIS 3512 (1937).

Under statute prohibiting sale of commodity as weight greater than actual weight it was not

a defense to a prosecution that the violation of the statute was a mistake without intent to cheat and defraud. D.C. Code 1929, T. 28, § 7. *Great Atlantic & Pacific Tea Co. v. District of Columbia*, 89 F.2d 502, 1937 U.S. App. LEXIS 3512 (1937).

On trial for selling two chickens as of weight

greater than their actual and true weight, evidence held not to raise issue as to violation being a mistake without intent to cheat and defraud. D.C. Code 1929, T. 28, § 7. *Great Atlantic & Pacific Tea Co. v. District of Columbia*, 89 F.2d 502, 1937 U.S. App. LEXIS 3512 (1937).

§ 37-201.08. Commodities sold by weight; “ton” defined.

When any commodity is sold by weight it shall be net weight. When any commodity is sold by the ton, it shall be understood to mean 2,000 pounds avoirdupois.

(Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 8; Mar. 31, 1945, 59 Stat. 45, ch. 46, § 1.)

Prior Codifications. — 1981 Ed., § 10-109. 1973 Ed., § 10-108.

§ 37-201.09. Vending machines.

No person, firm, or corporation shall erect, operate, or maintain, or cause to be erected, operated, or maintained within the District of Columbia any coin-in-the-slot machine or automatic vending device without placing in charge thereof some responsible person. No such machine shall be maintained for use when the same is not in perfect working order, and the person in charge as well as the owner of such machine or device shall be held responsible for operating or maintaining any such machine or device which is not in perfect working order. A sign or placard shall be placed on every such machine or device in a conspicuous place and shall contain the name and business address of the owner and of the person in charge of such machine or device, and shall state that the person in charge of such machine or device will refund to any person money deposited by him for which the commodity or service promised expressly or impliedly has not been received, and such person shall so refund such money.

(Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 9.)

Prior Codifications. — 1981 Ed., § 10-110. 1973 Ed., § 10-109.

§ 37-201.10. Sales tickets.

Every person, firm, or corporation shall, when a sales ticket is given with a purchase, cause such sales ticket to show the correct name and address of such person, firm, or corporation and the weight, measure, or numerical count, as the case may be, of each commodity sold to the purchaser, and every such person, firm, or corporation is hereby required to deliver such sales ticket to such purchaser when requested to do so by such purchaser at the time of sale.

(Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 10.)

Prior Codifications. — 1981 Ed., § 10-111. 1973 Ed., § 10-110.

§ 37-201.11. Sale of coal, charcoal, or coke.

(a) It shall be unlawful to sell or offer for sale in the District of Columbia any coal, charcoal, or coke in any manner other than by weight. No person shall sell or deliver or attempt to deliver to any purchaser within the District of Columbia any coal, charcoal, or coke unless the quantity so sold or delivered or attempted to be delivered to each purchaser shall have been weighed separately. No person shall deliver to any purchaser within the District of Columbia any coal, charcoal, or coke unless the same shall have been kept separated from any other coal, charcoal, coke, or other commodity after same has been weighed as aforesaid until final delivery thereof.

(b) No person shall deliver or attempt to deliver any coal, charcoal, or coke in a quantity of one-fourth of a ton or more without accompanying the same by a delivery ticket and a duplicate thereof, the original of which shall be in ink or indelible substance, on each of which shall be clearly and distinctly expressed the following information:

(1) The gross weight of the load, the tare weight of the delivery vehicle, and the net weight of the coal, charcoal, or coke expressed in pounds avoirdupois;

(2) The name of the owner and location of the scale on which the coal, charcoal, or coke shall have been weighed;

(3) Name and address of the seller and of the purchaser; and

(4) The name of the person who weighed said coal, charcoal, or coke.

(c) Upon demand of the Director or any of his assistants or inspectors upon the person in charge of the vehicle of delivery, the original of these tickets shall be surrendered to the official making such demand. The duplicate ticket shall be delivered to the purchaser of said coal, charcoal, or coke, or to his agent or representative, at the time of delivery of such coal, charcoal, or coke. Upon demand of the Director or any of his assistants or inspectors, or of the purchaser or intended purchaser, his agent, or representative, the person delivering such coal, charcoal, or coke shall convey the same forthwith to a public scale, owned and operated as hereinafter provided, or to any legally approved private scale in the District of Columbia, the owner of which may consent to its use, and shall permit the verifying of the weight, and after the delivery of such coal, charcoal, or coke shall return forthwith with the wagon, truck, or other vehicle used to the same scale and permit to be verified the weight of the wagon, truck or other vehicle.

(d) When coal, charcoal, or coke is sold in quantities of one-fourth ton or more, it shall be sold in quantities of one-fourth ton, one-half ton, 1 ton, or in multiples of a ton. When coal, charcoal, or coke is sold in quantities of less than one-fourth ton, it shall be weighed at the time of delivery or sold in packages containing 100 pounds, 50 pounds, 25 pounds, 15 pounds, or 10 pounds. No package of coal, charcoal, or coke shall be made for sale, kept for sale, offered for sale, exposed for sale, or sold unless it shall have distinctly and conspicuously printed on the outside thereof in plain bold-face type, not smaller than 36 point, the name of the commodity, the quantity of contents in pounds, and the name and address of the maker of said package. When coal, charcoal, or coke is sold and delivered in packages, no delivery ticket shall be required.

(e) No coal, charcoal, or coke shall be sold which contains at the time the weight is taken more water or other liquid substance than is due to the natural condition of the coal, charcoal, or coke.

(f) Every vendor of coal, charcoal, or coke shall cause his name and address to be distinctly and conspicuously displayed in letters and figures at least 4 inches high on both sides of every vehicle used by or for him for the sale or delivery of coal, charcoal, or coke. In case of an estate, the trustee, administrator, or executor, or other person in charge of the affairs of such estate shall be deemed to be the vendor.

(Mar. 3, 1921, 41 Stat. 1219, ch. 118, § 11; Apr. 27, 1945, 59 Stat. 97, ch. 99, § 3; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-112.
1973 Ed., § 10-111.

Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Editor's notes. — Department of Weights,

§ 37-201.12. Sale of ice.

It shall be unlawful to sell, within the District of Columbia, any ice in any manner other than by weight, such weight to be ascertained at the time of delivery of such ice, and every person, or in case of a firm, copartnership, or corporation, the person in charge of its business in the District of Columbia, engaged in the sale of ice shall keep on each of his or its wagons or other vehicles used in the sale or delivery of ice, while in use, a scale suitable for weighing ice which has been tested and approved in accordance with the provisions of this subchapter. Every scale used for weighing ice in making sales in quantities of 100 pounds or less shall have graduations of 1 pound or less. Scales used for weighing ice in making sales in quantities of more than 100 pounds may have graduations of 5 pounds or less.

(Mar. 3, 1921, 41 Stat. 1220, ch. 118, § 12.)

Prior Codifications. — 1981 Ed., § 10-113.

1973 Ed., § 10-112.

§ 37-201.13. Sale of bread.

(a) The word "bread" when used in the name of the food means the unit weighs 8 ounces or more after cooling, and any bread exposed for sale or sold in the District of Columbia shall have the net weight of the contents indicated by printing or marking the net weight on the label, wrapper, or container.

(b) Nothing herein shall apply to crackers, pretzels, buns, rolls, scones, or loaves of fancy bread weighing less than one-fourth pound avoirdupois, or what is commonly known as stale bread, provided the seller shall, at the time the sale is made, expressly state to the buyer that the bread sold is stale bread.

(c) Any loaf of bread weighing within 10 per centum in excess or within 4 per centum less than standard weight shall be deemed of legal weight.

(Mar. 3, 1921, 41 Stat. 1220, ch. 118, § 13; Aug. 24, 1921, 42 Stat. 201, ch. 92; Oct. 8, 1983, D.C. Law 5-33, § 2, 30 DCR 4022.)

Prior Codifications. — 1981 Ed., § 10-114. 1973 Ed., § 10-113.

Legislative history of Law 5-33. — Law 5-33, the “Weights and Measures, and Markets Act Amendment Act of 1983,” was introduced in Council and assigned Bill No. 5-178, which was referred to the Committee on Consumer and

Regulatory Affairs. The Bill was adopted on first and second readings on June 28, 1983 and July 12, 1983, respectively. Signed by the Mayor on July 21, 1983, it was assigned Act No. 5-55 and transmitted to both Houses of Congress for its review.

§ 37-201.14. Sale of frozen and fluid dairy products.

(a) All fluid and frozen dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, buttermilk, chocolate milk, chocolate drink, ice cream, and frozen custard, and frozen dairy desserts such as sherbet, water ice, and ice milk, shall, when sold or offered for sale in package form, be packaged only in units of gallons, one and one-half gallons, two and one-half gallons, integral multiples of the gallon, or binary-submultiples of the gallon of not less than 1 fluid ounce. Packages of less than 1 fluid ounce shall be permitted if the net contents of each such package are clearly and permanently marked thereon and if the labeling of the package conforms with the requirements of this subchapter or such package be 1 of a number of identical packages in an outside container the total contents and labeling of which conform with the requirements of this subchapter. Notwithstanding the foregoing, frozen dairy products and frozen dairy desserts may be sold or offered for sale in individually packaged or wrapped portions each containing 4 or more but less than 16 fluid ounces, in integral multiples of 1 ounce, or, if less than 4 ounces, in multiples of one-half ounce. The package or wrapper of each individual portion of any such frozen dairy product or frozen dairy dessert shall be clearly labeled to show the net contents in fluid ounces. When 2 or more such individual portions of a frozen dairy product or frozen dairy dessert are sold or offered for sale in an outside container, the exterior of such container shall be clearly labeled to show the number of individual portions contained therein and the total net contents of such container, in fluid ounces.

(b) Bottles or containers used for the retail sale of milk, buttermilk, chocolate milk, chocolate drink, or cream shall have clearly blown or otherwise permanently marked in the side of each bottle or container, or printed on the cap or stopple thereof, the name and address of the person, firm, or corporation who or which bottled such milk, buttermilk, chocolate milk, chocolate drink, or cream and the capacity of such bottle or container, except that a package containing less than 1 fluid ounce need not be labeled as to quantity if such package be 1 of a number of identical packages in an outside container the total contents and labeling of which conform with the requirements of this subchapter.

(Mar. 3, 1921, 41 Stat. 1221, ch. 118, § 14; Apr. 27, 1945, 59 Stat. 98, ch. 99, § 4; Aug. 7, 1964, 78 Stat. 382, Pub. L. 88-405, § 1.)

Cross references. — Registration of trademark, see § 36-121 et seq.

Sale of milk, cream, and ice cream, see § 48-601 et seq.

Prior Codifications. — 1981 Ed., § 10-115. 1973 Ed., § 10-114.

§ 37-201.15. Standard containers for sale of fruits, vegetables, and other dry commodities; no sales except in standard containers or by weight or count.

(a) Standard containers for the sale of fruits, vegetables, and other dry commodities in the District of Columbia shall be as follows:

(1) Standard barrel for fruits, vegetables, and other dry commodities other than cranberries, shall be of the following dimensions when measured without distention of its parts: Length of stave, twenty-eight and one-half inches; diameter of heads, seventeen and one-eighth inches; distance between heads, 26 inches; circumference of bulge, 64 inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch; provided, that any barrel of a different form having a capacity of 7,056 cubic inches shall be a standard barrel. The standard barrel for cranberries shall be of the following dimensions when measured without distention of its parts: length of staves, twenty-eight and one-half inches; diameter of head, sixteen and one-fourth inches; distance between heads, twenty-five and one-fourth inches; circumference of bulge, fifty-eight and one-half inches, outside measurement; and the thickness of staves not greater than four-tenths of an inch. It shall be unlawful to sell, offer, or expose for sale in the District of Columbia a barrel containing fruits or vegetables or any other dry commodity of less capacity than the standard barrels defined in this section, or subdivisions thereof known as the 3rd, half, and three-quarter barrel.

(2)(A) Standards for climax baskets for grapes and other fruits and vegetables shall be the 2-quart basket, 4-quart basket, and 12-quart basket, respectively.

(B) The standard 2-quart climax basket shall be of the following dimensions: length of bottom piece, nine and one-half inches; width of bottom piece, three and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, three and seven-eighths inches, outside measurement; top of basket, length 11 inches and width 5 inches, outside measurement. Basket to have a cover 5 by 11 inches, when a cover is used.

(C) The standard 4-quart climax basket shall be of the following dimensions: length of bottom piece, 12 inches; width of bottom piece, four and one-half inches; thickness of bottom piece, three-eighths of an inch; height of basket, four and eleven-sixteenths inches, outside measurement; top of basket, length 14 inches; width six and one-fourth inches, outside measurement. Basket to have cover six and one-fourth inches by 14 inches, when cover is used.

(D) The standard 12-quart climax basket shall be of the following dimensions: length of bottom piece, 16 inches; width of bottom piece, six and one-half inches; thickness of bottom piece, seven-sixteenths of an inch; height of basket, seven and one-sixteenth inches, outside measurement; top of basket, length 19 inches, width 9 inches, outside measurement. Basket to have cover 9 inches by 19 inches, when cover is used.

(3) The 6-basket carrier crate for fruits and vegetables shall contain 6

4-quart baskets, each basket having a capacity of two hundred and sixty-eight and eight-tenths cubic inches.

(4) The 4-basket flat crate for fruits and vegetables shall contain 4 3-quart baskets, each basket having a capacity of two hundred and one and six-tenths cubic inches.

(5) The standard box, basket, or other container for berries, cherries, shelled peas, shelled beans, and other fruits and vegetables of similar size shall be of the following capacities standard dry measure: One-half pint, pint, and quart. The one-half pint shall contain sixteen and eight-tenths cubic inches; the pint shall contain thirty-three and six-tenths cubic inches; the quart shall contain sixty-seven and two-tenths cubic inches.

(6)(A) Standard lug boxes for fruits and vegetables shall be the one-half bushel box and the 1-bushel box.

(B) The one-half bushel lug box shall be of the following inside dimensions: length, 17 inches; width, ten and five-tenths inches; depth, 6 inches.

(C) The 1-bushel lug box shall be of the following inside dimensions: length, twenty and three-fourths inches; width, 13 inches; depth, 8 inches; and no lug box of other than the foregoing dimensions shall be used in the District of Columbia.

(7)(A) The standard hampers for fruits and vegetables shall be the 1-peck hamper, one-half bushel-hamper, 1-bushel hamper, and one and one-half bushel hamper.

(B) The 1-peck hamper shall contain five hundred and thirty-seven and six-tenths cubic inches; the one-half-bushel hamper shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The 1-bushel hamper shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches, and the one and one-half-bushel hamper shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches.

(8)(A) The standard round-stave baskets for fruits and vegetables shall be the one-half-bushel basket, 1-bushel basket, one and one-half-bushel basket, and 2-bushel basket.

(B) The one-half-bushel basket shall contain one thousand and seventy-five and twenty-one one-hundredths cubic inches. The 1-bushel basket shall contain two thousand one hundred and fifty and forty-two one-hundredths cubic inches. The one and one-half-bushel basket shall contain three thousand two hundred and twenty-five and sixty-three one-hundredths cubic inches, and the 2-bushel basket shall contain four thousand three hundred and eighty-four one-hundredths cubic inches.

(9) The standard apple box shall contain two thousand one hundred and seventy-three and five-tenths cubic inches and be of the following inside dimensions: length, 18 inches; width, eleven and one-half inches; depth, ten and one-half inches.

(10) The standard pear box shall be of the following inside dimensions: length, 18 inches; width, eleven and one-half inches; depth, eight and one-half inches.

(11) The standard onion crate shall be of the following inside dimensions:

length, nineteen and five-eighths inches; width, eleven and three-sixteenths inches; depth, nine and thirteen-sixteenths inches.

(b) No person shall sell, offer, or expose for sale in the District of Columbia any fruits, vegetables, grain, or similar commodities in any manner except in the standard containers herein prescribed or by weight or numerical count; and no person shall sell, offer, or expose for sale, except by weight or numerical count, in the District of Columbia any commodity in any container herein prescribed which does not contain, at the time of such offer, exposure, or sale, the full capacity of such commodity compactly filled; provided, that fresh beets, onions, turnips, rhubarb, and other similar vegetables, usually and customarily sold by the bunch, may be sold by the bunch.

(c) All kale, spinach, and other similar leaf vegetables shall be sold at retail by net weight.

(Mar. 3, 1921, 41 Stat. 1221, ch. 118, § 15.)

Prior Codifications. — 1981 Ed., § 10-116. 1973 Ed., § 10-115.

§ 37-201.16. Substitutes for dry measure prohibited.

Nothing in this subchapter contained shall be construed as permitting the use as a dry measure or substituting for a dry measure any of the following containers: barrels, boxes, lug boxes, crates, hampers, baskets, or climax baskets; and the use of any such container as a measure is hereby expressly prohibited, and the user shall be fined or imprisoned as herein provided for other violations of this subchapter.

(Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 16.)

Prior Codifications. — 1981 Ed., § 10-117. 1973 Ed., § 10-116.

§ 37-201.16a. Quantity markings required for packages; exemption.

No person shall sell, offer, or expose for sale in the District of Columbia any food in package form unless the quantity of contents is plainly and conspicuously marked on the outside of each package in terms of weight, measure, or numerical count. The Council of the District of Columbia is authorized to establish and allow reasonable variation, tolerances, and exemptions as to small packages.

(Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 16 ½.)

Prior Codifications. — 1981 Ed., § 10-118. 1973 Ed., § 10-117.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(195)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-201.17. Sale of wood.

A cord of wood shall contain 128 cubic feet. Wood more than 8 inches in length shall be sold by the cord or fractional part thereof, and when delivered shall contain 128 cubic feet per cord when evenly and compactly stacked. Split wood, 8 inches or less in length, may be sold by such standard loads as shall be fixed by the Council of the District of Columbia.

(Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 17.)

Prior Codifications. — 1981 Ed., § 10-119. 1973 Ed., § 10-118.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(196) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-201.18. Standard liquid measures; automatic gasoline pumps.

The standard liquid gallon shall contain 231 cubic inches; the half gallon, one hundred and fifteen and five-tenths cubic inches; the quart, fifty-seven and seventy-five hundredths cubic inches; the pint, twenty-eight and eight hundred and seventy-five thousandths cubic inches; the half pint, fourteen and four hundred and thirty-seven thousandths cubic inches; the gill, seven and two hundred and eighteen thousandths cubic inches; the fluid ounce, one and eight-tenths cubic inches; and no liquid measure of other than the foregoing capacities, except multiples of the gallon, shall be deemed legal liquid measure in the District of Columbia; provided, that any automatic pump for the measurement of gasoline shall have graduations of fractional parts of a gallon in terms of either decimal or binary-submultiple subdivisions.

(Mar. 3, 1921, 41 Stat. 1223, ch. 118, §§ 18, 18a; July 7, 1932, 47 Stat. 609, ch. 442; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; Aug. 7, 1964, 78 Stat. 382, Pub. L. 88-405, § 2.)

Prior Codifications. — 1981 Ed., § 10-120.

1973 Ed., § 10-119.

§ 37-201.19. Sale of shucked oysters, fish, meat, butter, and cheese.

Shucked oysters shall be sold only by liquid measure or numerical count, and whenever there is included in the sale by measure of shucked oysters more than 10 per centum of oyster liquid or other liquid substance, the vendor shall be deemed guilty of selling short measure. All fish, meat, poultry, meat products, lard, lard substitutes, butter, butter substitutes, and cheese shall be sold by avoirdupois weight.

(Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 19; Apr. 27, 1945, 59 Stat. 99, ch. 99, § 6.)

Prior Codifications. — 1981 Ed., § 10-121. 1973 Ed., § 10-120.

§ 37-201.20. Automatic measuring pumps.

Every user of an automatic measuring pump or similar device, shall, when the supply of the commodity which he is measuring for sale with such pump or similar device, is insufficient to deliver correct measure of such commodity by the usual or customary method of operating such pump or device or when, for any cause whatever, such pump or device does not, by the usual or customary method of operating same, deliver correct measure, place a sign with the words, "Out of use" in a conspicuous place on such pump or device where it may readily be seen, and shall forthwith cease to use the same until his supply of such commodity is replenished or until such pump or device is repaired, adjusted, or otherwise put in condition to deliver correct measure. All automatic measuring pumps or other similar measuring devices in use shall be subject to inspection, and approval or condemnation, whether used for measuring or not.

(Mar. 3, 1921, 41 Stat. 1223, ch. 118, § 20.)

Prior Codifications. — 1981 Ed., § 10-123. 1973 Ed., § 10-122.

§ 37-201.21. Sale of pro rata quantity.

Whenever any commodity is offered for sale at a stated price for a stated quantity, a smaller quantity shall be sold at a pro rata price unless the purchaser is informed to the contrary at the time of sale.

(Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 21.)

Prior Codifications. — 1981 Ed., § 10-124. 1973 Ed., § 10-123.

§ 37-201.22. Inspection of commodities by Director.

The Director, or under his direction, his assistants and inspectors, shall from time to time weigh or measure and inspect packages or amounts of commodities of whatever kind kept for sale, offered or exposed for sale, sold, or in the process of delivery, in order to determine whether or not the same are kept for

sale, offered for sale, or sold in accordance with the provisions of this subchapter, and no person shall refuse to permit such weighing, measuring, or inspection whenever demanded by the Director or any of his assistants or inspectors.

(Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 22; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-125.
1973 Ed., § 10-124.

Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Editor's notes. — Department of Weights,

§ 37-201.22a. Sale of food by false advertising.

The Director of Weights, Measures, and Markets is further authorized to make purchases of food in connection with the investigation and detection of sales of food by misrepresentation or false advertising in violation of §§ 22-1511 to 22-1513; and there are authorized to be appropriated annually such sums as may be necessary for carrying out the purposes of this section.

(Mar. 3, 1921, ch. 118, § 22 ½; Apr. 27, 1945, 59 Stat. 99, ch. 99, § 5; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-126.
1973 Ed., § 10-124a.

Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Editor's notes. — Department of Weights,

§ 37-201.23. Sale of measuring devices by Director prohibited.

It shall be unlawful for the Director or any employee of his office to vend any weights, measures, weighing or measuring device, or to offer or expose the same for sale, or to be interested, directly or indirectly, in the sale of same.

(Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 23; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-127.
1973 Ed., § 10-125.

Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Editor's notes. — Department of Weights,

§ 37-201.24. Police power conferred upon Director; inspections without warrants.

There is hereby conferred upon the Director, his assistants and inspectors, police power, and in the exercise of their duties they shall, upon demand, exhibit their badges to any person questioning their authority; and they are authorized and empowered to make arrests of any person violating any of the provisions of this subchapter. The Director, his assistants, and inspectors may, for the purpose of carrying out and enforcing the provisions of this subchapter and in the performance of their official duties, with or without formal warrant, enter or go into or upon any stand, place, building, or premises, except a

private residence, and may stop any vendor, peddler, dealer, vehicle, or person in charge thereof for the purpose of making inspections or tests.

(Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 24; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Cross references. — Warrants and arrests, see § 23-501 et seq.

Prior Codifications. — 1981 Ed., § 10-128. 1973 Ed., § 10-126.

Editor's notes. — Department of Weights, Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

§ 37-201.25. Council may establish tolerances and specifications.

The Council of the District of Columbia is hereby authorized and empowered to establish tolerances and specifications for scales, weights, measures, weighing or measuring instruments or devices, and containers used in the District of Columbia. The Council shall prescribe and allow for barrels, containers, and packages, provided for in this subchapter the same specifications, variations, or tolerances that have been prescribed or established, or that may hereafter be prescribed or established for like barrels, containers, or packages by any officer of the United States in accordance with any requirement of an act of Congress.

(Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 25.)

Prior Codifications. — 1981 Ed., § 10-129. 1973 Ed., § 10-127.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(197) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Home Rule Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-201.26. Weighmasters; public scales; fees. [Repealed].

Repealed.

(Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 26; 1973 Ed., § 10-128; Apr. 20, 1999, D.C. Law 12-261, § 2003(o), 46 DCR 3142.)

Prior Codifications. — 1981 Ed., § 10-130. 1973 Ed., § 10-128.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15,

1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(198) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Home Rule Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-201.27. Powers and duties of Director conferred on assistants and inspectors.

The powers and duties granted to and imposed on the Director by this subchapter, are also hereby granted to and imposed on his assistants and inspectors when acting under his instructions.

(Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 27; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-131. 1973 Ed., § 10-129.

Editor's notes. — Department of Weights,

Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

§ 37-201.28. Supervision of markets; investigations and reports.

The Mayor of the District of Columbia is authorized and empowered to make such regulations as may be necessary for the control, regulation, and supervision of all markets owned by the District of Columbia and the Director, under the direction of the Mayor, shall have supervision of all produce and other markets owned by the District of Columbia, shall enforce such regulations regarding the operation of the same as the Mayor may make, shall make such investigations regarding the sale, distribution, or prices of commodities in the District of Columbia as the Mayor may direct, and shall make reports and recommendations in connection therewith.

(Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 28; Apr. 27, 1945, 59 Stat. 99, ch. 99, § 7; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1; May 2, 2002, D.C. Law 14-116, § 4, 49 DCR 1945.)

Cross references. — Rules and regulations, see § 1-319.

Prior Codifications. — 1981 Ed., § 10-132. 1973 Ed., § 10-130.

Effect of amendments. — D.C. Law 14-116 substituted "Mayor" for "Council".

Temporary Amendment of Section. — Section 4 of D.C. Law 14-55 amended the section by substituting "Mayor" for "Council" wherever it appears.

Section 10(b) of D.C. Law 14-55 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary

(90 day) amendment of section, see § 4 of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 4 of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-55. — Law 14-55, the "Food Regulation Temporary Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-300, which was retained by Council. The Bill was adopted on first

and second readings on July 10, 2001, and September 19, 2001, respectively. Signed by the Mayor on October 2, 2001, it was assigned Act No. 14-135 and transmitted to both Houses of Congress for its review. D.C. Law 14-55 became effective on December 6, 2001.

Legislative history of Law 14-116. — Law 14-116, the “Food Regulation Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-154, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 4, 2001, and February 5, 2002, respectively. Signed by the Mayor on February 25, 2002, it was assigned Act No. 14-268 and transmitted to both Houses of Congress for its review. D.C. Law 14-116 became effective on May 2, 2002.

Editor’s notes. — Department of Weights, Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(199) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Home Rule Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-201.29. “Mayor” and “Director” defined.

Wherever the word “Mayor” is used in this subchapter, it shall be construed to mean the Mayor of the District of Columbia. Whenever the word “Director” is used in this subchapter, it shall be construed to mean the Director of Weights, Measures, and Markets.

(Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 29; Apr. 11, 1946, 60 Stat. 88, ch. 134, § 1.)

Prior Codifications. — 1981 Ed., § 10-133. 1973 Ed., § 10-131.

Editor’s notes. — Department of Weights, Measures and Markets abolished: See Historical and Statutory Notes following § 37-201.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Home Rule Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-201.30. “Person” defined; meaning of singular words.

The word “person,” as used in this subchapter, shall be construed to include copartnerships, companies, corporations, societies, and associations. Whenever any word in this subchapter, is used in the singular, it shall be construed to mean either singular or plural, and wherever any word in this subchapter is used in the plural, it shall be construed to mean either plural or singular, as the circumstances demand.

(Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 30.)

Prior Codifications. — 1981 Ed., § 10-134. 1973 Ed., § 10-132.

§ 37-201.31. **Severability.**

Each section of this subchapter, and every provision of each section, is hereby declared to be an independent section or provision, and the holding of any section or provision of any section to be void, ineffective, or unconstitutional for any cause whatever shall not be deemed to affect any other section or provision thereof.

(Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 31.)

Prior Codifications. — 1981 Ed., § 10-135. 1973 Ed., § 10-133.

§ 37-201.32. **Penalties; conduct of prosecutions.**

Any person violating any of the provisions of this subchapter shall be punished by a fine not to exceed \$500, or by both such fine and imprisonment not to exceed 6 months. All prosecutions under this subchapter shall be instituted by the Corporation Counsel or one of his assistants in the Superior Court of the District of Columbia. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

(Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 32; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 463, 32 DCR 4450.)

Prior Codifications. — 1981 Ed., § 10-136. 1973 Ed., § 10-134.

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on

Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

CASE NOTES

In general.

Where customer, after being told price per pound of chickens, asked for a chicken or chickens weighing around three or four pounds, and after they were weighed was told that they came to \$1.46, the jury were warranted in finding there was an implied representation as to their weight within statute prohibiting sale of commodity as weight greater than actual weight. D.C. Code 1929, T. 28, § 7. *Great Atlantic & Pacific Tea Co. v. District of Columbia*, 89 F.2d 502, 1937 U.S. App. LEXIS 3512 (1937).

Under statute prohibiting sale of commodity as weight greater than actual weight it was not

a defense to a prosecution that the violation of the statute was a mistake without intent to cheat and defraud. D.C. Code 1929, T. 28, § 7. *Great Atlantic & Pacific Tea Co. v. District of Columbia*, 89 F.2d 502, 1937 U.S. App. LEXIS 3512 (1937).

On trial for selling two chickens as of weight greater than their actual and true weight, evidence held not to raise issue as to violation being a mistake without intent to cheat and defraud. D.C. Code 1929, T. 28, § 7. *Great Atlantic & Pacific Tea Co. v. District of Columbia*, 89 F.2d 502, 1937 U.S. App. LEXIS 3512 (1937).

§ 37-201.33. Registration and inspection fees for weighing and measuring devices.

(a) The Mayor shall collect fees relating to the registration and inspection of weighing and measuring devices in the District of Columbia.

(b) The following fees are established for the annual registration and inspection of weighing and measuring devices in the District of Columbia:

(1) Scales with a capacity of up to 100 pound, \$75 (maximum fee per location, \$900);

(2) Scales with a capacity of more than 100 pounds, up to 2,000 pounds, \$200;

(3) Scales with a capacity of more than 2,000 pounds, up to 20,000 pounds, \$500;

(4) Vehicle scales, \$1,500;

(5) Retail engine fuel dispenser meter, \$60;

(6) Bulk petroleum fuel meter, \$250;

(7) Liquefied petroleum gas meter of $\frac{3}{4}$ inch diameter or less, \$250;

(8) Liquefied petroleum gas meter of greater than $\frac{3}{4}$ inch diameter, \$375;

(9) Wire/Cordage or fabric measuring device, \$50;

(10) Compressed natural gas (per meter), \$250;

(11) Hopper scales, \$250;

(12) Prescription balance electronic/mechanical, \$75;

(13) Jeweler's balance, \$75;

(14) Yard sticks and tapes measures, \$25;

(15) UPC scanning (per unit), \$25.

(c) The Mayor, by rule, may amend the amount fees set forth in subsection (b) of this section and establish new fees as may be necessary for the registration and inspection of weighing and measuring devices. Fees collected pursuant to this section shall be deposited in the General Fund of the District of Columbia.

(d) The Mayor may condemn and take out of service any weighing and measuring device not properly registered pursuant to this section.

(Mar. 3, 1921, 41 Stat. 1220, ch. 118, § 32a, as added Dec. 7, 2004, D.C. Law 15-205, § 2052, 51 DCR 8441; Sept. 18, 2007, D.C. Law 17-20, § 2012, 54 DCR 7052; Mar. 25, 2009, D.C. Law 17-353, § 194, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-20 added subsec. (d).

D.C. Law 17-353 validated a previously made technical correction in subsec. (b)(1).

Emergency legislation. — For temporary (90 day) addition of section, see § 2052 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition of section, see § 2052 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2012 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 37-103.

Legislative history of Law 17-20. — Law 17-20, the "Fiscal Year 2008 Budget Support Act of 2007", was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned

Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses

of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Short title. — Short title of subtitle E of title II of Law 15-205: Section 2051 of D.C. Law 15-205 provided that subtitle E of title II of the act may be cited as the Registration and Inspection of Weighing and Measuring Devices Amendment Act of 2004.

Short title: Section 2011 of D.C. Law 17-20 provided that subtitle B of title II of the act may be cited as the “Weights and Measures Device Amendment Act of 2007”.

Subchapter II. Definition of “Barrel of Corn.”

§ 37-203.01. “Barrel of corn” defined.

Three hundred and fifty pounds of corn on the cob shall constitute a barrel and 280 pounds of shelled corn shall constitute a barrel; provided, that nothing in this section shall be held to prohibit the sale of corn on the cob by the barrel.

(Mar. 3, 1899, 30 Stat. 1346, ch. 432, § 2.)

Prior Codifications. — 1981 Ed., § 10-122. 1973 Ed., § 10-121.

Subchapter III. Markets Generally.

§ 37-205.01. Supervision of municipal fish market.

The Mayor of the District of Columbia is authorized and directed in the name of the District of Columbia to exclusively control, regulate, and operate as a market and for such other uses as the Mayor determines to be appropriate, the water frontage on the Potomac River lying south of Water Street, between 11th and 12th Streets, including the buildings and wharves thereon; and said Mayor shall have power to make leases, fix and determine rentals, wharfage and dockage fees, and to collect and pay the same into the treasury of the United States to the credit of the General Fund of the District of Columbia; and said Mayor to make and amend, from time to time, all such regulations as it may deem proper for the control, regulation, and operation of said market.

(Mar. 19, 1906, 34 Stat. 72, ch. 958; Mar. 4, 1913, 37 Stat. 941, ch. 150; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; May 2, 2002, D.C. Law 14-116, § 5, 49 DCR 1945; July 9, 2012, 126 Stat. 990, Pub. L. 112-143, § 2.)

Cross references. — Control and rental of wharves, see §§ 10-501.01, 10-501.02.

Harbor regulations, see § 22-4401 et seq.

Rules and regulations, see § 1-303.03.

Prior Codifications. — 1981 Ed., § 10-137. 1973 Ed., § 10-135.

Effect of amendments. — D.C. Law 14-116

substituted “said Mayor” for “the Council of the District of Columbia”.

Pub. L. 112-143 substituted “operate as a market and for such other uses as the Mayor determines to be appropriate” for “operate as a municipal fish wharf and market”; deleted “, and said wharf shall constitute the sole wharf

for the landing of fish and oysters for sale in the District of Columbia" following "thereon"; and substituted "operation of said market" for "operation of said municipal fish wharf and market".

Temporary Amendment of Section. — Section 5 of D.C. Law 14-55 amended the section by substituting "said Mayor" for "the Council of the District of Columbia".

Section 10(b) of D.C. Law 14-55 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5 of Food Regulation Emergency Amendment Act of 2001 (D.C. Act 14-128, August 3, 2001, 48 DCR 7939).

For temporary (90 day) amendment of section, see § 5 of Food Regulation Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-147, October 23, 2001, 48 DCR 10183).

Legislative history of Law 14-55. — For D.C. Law 14-55, see notes following § 37-201.28.

Legislative history of Law 14-116. — For Law 14-116, see notes following § 37-201.28.

Delegation of Authority. — Delegation of authority to National Capital Revitalization

Corporation and Anacostia Waterfront Corporation Reorganization Clarification Emergency Act of 2007, see Mayor's Order 2007-172, July 25, 2007 (54 DCR 11600).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(200) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Home Rule Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 37-205.02. Markets; disposition of receipts; charges.

On and after July 1, 1906, all receipts of the Wholesale Producers' Market, including the receipts for the occupation of the south side of B Street northwest, and the Farmers' Street Markets adjacent to the Western and Georgetown Markets, respectively, shall be paid to the Director of the Department of Finance and Revenue, to the credit of the revenues of the District, weekly. There is hereby authorized for the use of space at the above-mentioned street markets a space charge of \$1 per day for each space occupied for rent. The market masters of the several markets herein mentioned shall make collections daily and make a return thereof, with a sworn statement, weekly to the sealer of weights and measures, who shall deposit the same with the Mayor to the credit of the revenues of the District of Columbia.

The Mayor of the District of Columbia shall amend by rule from time to time the charge imposed for the use of space at the street markets mentioned in this section.

(June 27, 1906, 34 Stat. 485, ch. 3553; Mar. 4, 1913, 37 Stat. 940, ch. 150; Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 33; Nov. 15, 1983, D.C. Law 5-39, § 2, 30 DCR 4991; Apr. 16, 1999, D.C. Law 12-228, § 15, 46 DCR 1066.)

Cross references. — Disposition of fees, see § 47-127.

Eastern Market real property asset management and outdoor vending, see § 37-301 et seq.

Prior Codifications. — 1981 Ed., § 10-138. 1973 Ed., § 10-136.

Emergency legislation. — For temporary permission, on an emergency basis, for the interim continuation of non-food open air retailing, see §§ 2 and 3 of the Eastern Market Open Air Retailing Emergency Act of 1998 (D.C. Act. 12-320, April 6, 1998, 45 DCR 2296),

and see §§ 2 and 3 of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104).

For temporary repeal of the Eastern Market Open Air Retailing Emergency Act of 1998 (D.C. Act 12-320), see § 4(a) of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104).

For temporary repeal of the Eastern Market Open Air Retailing Temporary Act of 1998 (Bill 12-513), see § 4(b) of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104).

For temporary provision to permit, on an emergency basis, the interim continuation of non-food open air retailing in the exterior space at Eastern Market that is not otherwise leased, see §§ 2 and 3 of the Eastern Market Open Air Retailing Emergency Act of 1998 (D.C. Act 12-320, April 6, 1998, 45 DCR 2296). D.C. Act 12-320 was subsequently repealed by § 4(a) of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104), and § 4(a) of the Eastern Market Open Air Retailing Congressional Review Emergency Act of 1998 (D.C. Act 12-435, August 12, 1998, 45 DCR 5951).

For temporary provision to permit, on an emergency basis, the interim continuation of non-food open air retailing in the exterior space at Eastern Market and to clarify the extent to which exterior space is otherwise leased, see §§ 2 and 3 of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104), and §§ 2 and 3 of the Eastern Market Open Air Retailing Congressional Review Emergency Act of 1998 (D.C. Act 12-435, August 12, 1998, 45 DCR 5951).

For temporary (90-day) continuation and clarification provisions relative to the Eastern Market, see § 2 of the Eastern Market Open Air Retailing Emergency Act of 2000 (D.C. Act 13-54, April 6, 1999, 46 DCR 3648).

Legislative history of Law 5-39. — Law 5-39, the “Farmers Street Market Space Charge Increase Act of 1983,” was introduced in Council and assigned Bill No. 5-97, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 5, 1983 and September 6, 1983, respectively. Signed by the Mayor on September 22, 1983, it was assigned Act No. 5-64 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-133. — Law 12-133, the “Eastern Market Open Air Retailing Temporary Act of 1998,” was introduced in Council and assigned Bill No. 12-573. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 20, 1998, it was

assigned Act No. 12-333 and transmitted to both Houses of Congress for its review. D.C. Law 12-133 became effective on July 24, 1998.

Legislative history of Law 12-150. — Law 12-150, the “Eastern Market Open Air Retailing Second Temporary Act of 1998,” was introduced in Council and assigned Bill No. 12-620. The Bill was adopted on first and second readings on April 21, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 20, 1998, it was assigned Act No. 12-362 and transmitted to both Houses of Congress for its review. D.C. Law 12-150 became effective on September 18, 1998.

Legislative history of Law 12-228. — Law 12-228, the “Eastern Market Real Property Asset Management and Outdoor Vending Act of 1998,” was introduced in Council and assigned Bill No. 12-477, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 2, 1998, and June 16, 1998, respectively. Signed by the Mayor on July 8, 1998, it was assigned Act No. 12-416 and transmitted to both Houses of Congress for its review. D.C. Law 12-228 became effective on April 16, 1999.

Effective date. — Section 3 of D.C. Law 5-39 provided that § 2 of the act shall take effect 30 days following November 15, 1983.

References in text. — Pursuant to the Office of the Chief Financial Officer’s “Notice of Public Interest” published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner’s Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, *nunc pro tunc*.

Editor’s notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Divi-

sion, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Temporary continuation of non-food open air retailing at Eastern Market: Sections 2 and 3 of

D.C. Law 12-133, the Eastern Market Open Air Retailing Temporary Act of 1998, provide, on a temporary basis, for the interim continuation of non-food open air retailing in the exterior space at Eastern Market that is not otherwise leased.

Section 5(b) of D.C. Law 12-133 provided that the act shall expire after 225 days of its having taken effect.

Temporary continuation of non-food open air retailing at Eastern Market: Sections 2 and 3 of D.C. Law 12-150, the Eastern Market Open Air Retailing Temporary Act of 1998, provide, on a temporary basis, for the interim continuation of non-food open air retailing in the exterior space at Eastern Market and to clarify the extent to which exterior space is otherwise leased.

Section 4 of D.C. Law 12-150 provided for the repeal of the Eastern Market Open Air Retailing Temporary Act of 1998.

Section 6(b) of D.C. Law 12-150 provided that the act shall expire after 225 days of its having taken effect.

DIVISION VI. EDUCATION, LIBRARIES, AND PUBLIC INSTITUTIONS [REPEALED].

TITLE 38. EDUCATIONAL INSTITUTIONS.

SUBTITLE I. PUBLIC EDUCATION — PRIMARY AND SECONDARY.

Chapter

1. Board of Education.
 - 1A. District of Columbia Public Schools.
 - 1B. Department of Education.
2. Compulsory School Attendance and Expulsion.
 - 2A. Pre-Kindergarten Education System.
3. Residency Requirement and Nonresident Tuition.
 - 3A. Ombudsman for Public Education.
4. Use of School Buildings.
 - 4A. Office of Public Education Facilities Modernization.
5. Immunization of School Students.
6. Student Health Care.
7. Free Textbooks.
 - 7A. Public School Curriculum.
 - 7B. Education Preparedness.
8. Public School Food Services.
 - 8A. Healthy Schools.
9. Miscellaneous Provisions.

SUBTITLE II. PUBLIC EDUCATION — ADULT AND COMMUNITY.

10. Fees for Select Adult, Community, and Continuing Education Courses.
 - 10A. Adult Technical Career Training.

SUBTITLE III. PUBLIC EDUCATION — POST SECONDARY.

11. Public Higher Educational Institutions.
12. Public Postsecondary Education Reorganization.
 - 12A. Community College of the District of Columbia Plan for Independence.
13. Education Licensure Commission.
14. Medical and Dental Colleges.
15. Nurses Training Corps.
16. Law School Clinical Programs Funding.

SUBTITLE IV. PUBLIC EDUCATION — CHARTER SCHOOLS.

17. Public Charter Schools.
 18. District of Columbia School Reform (Public Charter Schools).
 - 18A. Miscellaneous Public Charter School Provisions.

EDUCATIONAL INSTITUTIONS

SUBTITLE IV-A. PUBLIC EDUCATION — SCHOOL CHOICE.

Chapter

- 18M. Grants for Tuition to Attend Primary and Secondary Schools in the District [Repealed]..
- 18N. Scholarships for Opportunity and Results.

SUBTITLE V. EDUCATION PERSONNEL.

- 19. Teachers, School Officers, and Other Employees in General.
- 20. Retirement of Public School Teachers.
- 21. Interstate Agreement on Qualification of Educational Personnel.
- 22. Computer Literacy and Training for Teachers.
- 22A. Housing Support for Teachers Program.

SUBTITLE VI. EDUCATION FOR HEARING IMPAIRED PERSONS.

- 23. Gallaudet College.
- 24. Education for the Deaf.
- 24A. American Sign Language Recognition.

SUBTITLE VII. SPECIAL EDUCATION.

- 25. Special Education and Assessment.
- 25A. Special Education Task Force Establishment.
- 25B. Placement of Students with Disabilities in Nonpublic Schools.

SUBTITLE VIII. STATE LEVEL AGENCIES.

- 26. Office of the State Superintendent of Education.
- 26A. State Board of Education.

SUBTITLE IX. COLLEGE ACCESS ASSISTANCE.

- 27. College Access Assistance.
- 27A. Higher Education Financial Assistance.

SUBTITLE X. SCHOOL FUNDING.

- 28. School-Based Budgeting and Accountability.
- 29. Uniform Per Student Funding Formula.
- 29A. Financial Management.
- 29B. Public School Capital Spending.

SUBTITLE XI. MISCELLANEOUS EDUCATION PROVISIONS.

Chapter

30. Compact for Education of the Education Commission of the States.
31. Traffic Control in School Zones.
32. Notice Requirement for Facilities Located Near Schools.
33. Educational Services for Detained and Committed Youth.

SUBTITLE I. PUBLIC EDUCATION — PRIMARY AND SECONDARY.

CHAPTER 1. BOARD OF EDUCATION.

Subchapter I. General

Sec.

- 38-101. [Repealed].
- 38-102. General policies; expenditures; appointment of employees.
- 38-103. [Repealed].
- 38-104. Exemption from personal liability and security or bond requirement.
- 38-105, 38-106. [Repealed].
- 38-107. Supervisor of Manual Training.
- 38-108. Classification by correlated subjects.
- 38-109. Head of department; head teacher; class size limitation.
- 38-110. [Repealed].
- 38-111. Investigation or trial of teacher.
- 38-112. Masculine pronoun to include both male and female.

Subchapter I-A. Annual Budget Submission Inclusions

- 38-121.01. District of Columbia Public Schools use of private funds.
- 38-121.02. District of Columbia Public Schools

Sec.

performance measures standardization.

Subchapter II. Chancellor.

- 38-131. Provisional duties of the Chancellor.
- 38-132. Authority of acting Superintendent.

Subchapter III. Miscellaneous Provisions.

- 38-151. Normal schools.
- 38-152. Education of pages.
- 38-153. Coordination of municipal programs.
- 38-154. [Repealed].
- 38-155. Adoption and use of seal.
- 38-156. Power to raze buildings; limitations.
- 38-157. Contracting out of food services operations and security services; development of management and data systems.
- 38-158. Detail of officers to training program.
- 38-159. Public school enrollment census.
- 38-160. Public schools Schedule A submission.
- 38-161. Attendance at Teachers College by foreign students.

*Subchapter I. General.***§ 38-101. Election; term of office; vacancies; meetings [Repealed].**

Repealed.

(June 20, 1906, 34 Stat. 316, ch. 3446, § 2(a)-(f); Jan. 26, 1929, 45 Stat. 1139, ch. 105; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 2, 1957, 71 Stat. 341, Pub. L. 85-119, § 1; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(a), (c); Dec. 23, 1971, 85 Stat. 795, Pub. L. 92-220, § 3; Aug. 14, 1973, 87 Stat. 313, Pub. L. 93-92, § 2; Aug. 18, 1978, D.C. Law 2-101, § 4, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3204(a), 25 DCR 5740; Sept. 26, 1984, D.C. Law 5-116,

§ 6, 31 DCR 4018; July 18, 2000, D.C. Law 13-149, § 2, 47 DCR 4639; Dec. 7, 2004, D.C. Law 15-211, § 2, 51 DCR 8805; Apr. 13, 2005, D.C. Law 15-354, §§ 53, 93, 52 DCR 2638; June 12, 2007, D.C. Law 17-9, § 1003(a), 54 DCR 4102.)

Prior Codifications. — 1981 Ed., § 31-101(b)—(e).

1973 Ed., § 31-101.

Temporary Amendment of Section. — Section 2 of D.C. Law 15-204 rewrote subsec. (a); in subsec. (b), substituted “paragraph (3)(C), (E), and (F)” for “paragraph (3)(C) and (3)(D)” and substituted “including the at-large member” for “including the President” in par. (1), rewrote subpar. (A) of par. (3), repealed subpar. (D) of par. (3), and added subpars. (E) and (F) of par. (3); in subsec. (c), inserted “or ward” after “special school district” in par. (1); and in subsec. (f), substituted “subsection (b)(3)(C) and (E)” for “subsection (b)(3) (C)”. Subsec. (a), and subpars. (A), (E), and (F) of par. (3) of subsec. (b), read as follows:

“(a)(1) Beginning July 7, 2000, and ending at noon January 2, 2009, the Board of Education shall consist of 9 members. Four members shall be appointed by the Mayor and confirmed by the Council. Five members shall be elected. Four of the 5 elected members shall be elected from the 4 school districts created pursuant to paragraph (2) of this subsection. One member shall be elected at-large as the president of the Board.

“(2) Beginning July 7, 2000, and ending at noon January 2, 2009, the 4 school districts for the election of Board members pursuant to paragraph (1) of this subsection, shall be comprised of the 8 election wards created pursuant to section 2 of the Boundaries Act of 1975, effective December 16, 1975 (D.C. Law 1-38; D.C. Official Code § 1-1011.01), as follows:

“(A) Wards 1 and 2 shall comprise School District I;

“(B) Wards 3 and 4 shall comprise School District II;

“(C) Wards 5 and 6 shall comprise School District III; and

“(D) Wards 7 and 8 shall comprise School District IV.

“(3) Beginning January 2, 2009, the Board of Education shall consist of 9 members. One member shall be elected from each of the 8 school election wards established pursuant to section 2 of the Boundaries Act of 1975, effective December 16, 1975 (D.C. Law 1-38; D.C. Official Code § 1-1011.01), and one member shall be elected at-large. The Board shall select its President from among the 9 members of the Board.”

“(A)(i) The term of office of a member of the Board of Education elected in a general election shall commence on January 2 of the year fol-

lowing the election. The term of office of an incumbent member of the Board shall expire at noon January 2 of the year following the general election.

“(ii) The term of a member elected from a school district or appointed pursuant to subsection (a)(1) of this section shall expire at noon January 2, 2009.”

“(E)(i) The 2 members of the Board of Education elected in 2006 from School Districts III and IV and the President elected in 2006 shall serve through January 2, 2009.

“(ii) The 2 members of the Board of Education appointed by the Mayor and confirmed by the Council for terms to begin January 2, 2007, shall serve through January 2, 2009.”

“(F) The initial terms of the members of the Board of Education elected in the general election in November 2008 shall be as follows:

“(i) The 4 members elected from wards 1, 3, 5, and 7 shall serve 2 year terms, ending at noon January 2, 2011; and

“(ii) The 4 members elected from wards 2, 4, 6 and 8 and the member elected at-large shall serve 4 year terms, ending at noon January 2, 2013.”

Section 5(b) of D.C. Law 15-204 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3 of the Extension of the Nominating Petition Time Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-452, November 7, 2000, 47 DCR 9403).

For temporary (90 day) amendment of section, see § 2 of Board of Education Continuity and Transition Emergency Amendment Act of 2004 (D.C. Act 15-465, June 30, 2004, 51 DCR 6997).

For temporary (90 day) maximization of federal and private grant acquisition provisions, see § 4052 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2 of Board of Education Continuity and Transition Congressional Review Emergency Act of 2004 (D.C. Act 15-533, October 4, 2004, 51 DCR 9628).

For temporary (90 day) maximization of federal and private grant acquisition provisions, see § 4052 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2 of Board of Education Continuity and Transition Second Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-659, December 29, 2004, 52 DCR 1434).

Legislative history of Law 13-149. — Law 13-149, the “School Governance Companion Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-470, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on March 3, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 24, 2000, it was assigned Act No. 13-336 and transmitted to both Houses of Congress for its review. D.C. Law 13-149 became effective on July 18, 2000.

Legislative history of Law 15-204. — Law 15-204, the “Board of Education Continuity and Transition Temporary Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-881, and was retained by Council. The Bill was adopted on first and second readings on June 16, 2004, and June 29, 2004, respectively. Signed by the Mayor on July 21, 2004, it was assigned Act No. 15-478 and transmitted to both Houses of Congress for its re-

view. D.C. Law 15-204 became effective on December 7, 2004.

Legislative history of Law 15-211. — Law 15-211, the “Board of Education Continuity and Transition Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-714, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-498 and transmitted to both Houses of Congress for its review. D.C. Law 15-211 became effective on December 7, 2004.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004”, was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

CASE NOTES

ANALYSIS

Candidates, campaigning and conduct of elections.

Capacity to sue or be sued.

Declaratory relief.

Meetings.

Powers of judiciary.

Validity of prior provisions.

Candidates, campaigning and conduct of elections.

Use of political party endorsements by board of education candidate in her campaign was not prohibited. D.C. Code 1981, § 31-101(a). *Hawkins v. Butler-Truesdale*, 584 A.2d 1241, 1990 D.C. App. LEXIS 329 (1990).

Board of education candidate did not appear on ballot as part of any “slate,” so as to violate statute requiring election to be conducted on nonpartisan basis, even though she linked her name with those of democratic party candidates for other offices. D.C. Code 1981, § 31-101(a). *Hawkins v. Butler-Truesdale*, 584 A.2d 1241, 1990 D.C. App. LEXIS 329 (1990).

Fact that board of education candidate held elective office of president of ward democrats when she ran for membership on board of education did not place her in violation of statute requiring that board elections be conducted on nonpartisan basis. D.C. Code 1981, § 31-101(a, c). *Hawkins v. Butler-Truesdale*,

584 A.2d 1241, 1990 D.C. App. LEXIS 329 (1990).

Statute providing that election of District of Columbia Board of Education members shall be conducted on nonpartisan basis does not prohibit a candidate from receiving approval of political party and using benefit of such approval to his advantage. D.C. Code § 31-101(a). *Boone v. Taylor*, 256 A.2d 411, 1969 D.C. App. LEXIS 297 (App. 1969).

Capacity to sue or be sued.

Because statute establishing District of Columbia Board of Education did not provide that Board might sue or be sued, Board was not suable entity and could not be sued, and though plaintiffs who sought injunctive relief under Education of the Handicapped Act, *inter alia*, could name individual members of Board as parties and also name other public officials as parties, to extent that claim for injunctive relief was properly directed at those board members or officers, any claim for damages was to name district as party if district funds were to be reached. Education of the Handicapped Act, § 601 et seq., as amended, 20 U.S.C. § 1400 et seq.; Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C. § 794; 42 U.S.C. § 1983; U.S. Const. Amend. 5; D.C. Code 1981, §§ 31-101, 31-1511. *Tschanneral v. District of Columbia Bd. of Education*, 594 F. Supp. 407, 1984 U.S. Dist. LEXIS 23620 (1984).

A suit for damages against the District of Columbia Board of Education cannot survive, as statute creating that Board does not provide that the Board is a body corporate having the capability to sue or be sued. D.C. Code 1981, § 31-101 et seq. *Parker v. District of Columbia*, 588 F. Supp. 518, 1983 U.S. Dist. LEXIS 15030 (1983).

Under the statutes which created the District of Columbia Board of Education, the Board was not a suable entity. D.C. Code § 31-101(a). *Kelley v. Morris*, 400 A.2d 1045, 1979 D.C. App. LEXIS 343 (1979).

Declaratory relief.

Claim by members of District of Columbia Board of Education of entitlement to declaratory or injunctive relief, pursuant to First Amendment, from enforcement of order issued by District of Columbia Financial Responsibility and Management Assistance Authority delegating majority of Board's authority to run District's schools to District's Board of Trustees, was premature, absent any evidence that members of Board of Education had suffered or were about to suffer any injury to their First Amendment rights, or any threat that they would be forced or required pursuant to statute to vote contrary to their beliefs. U.S. Const. Art. 3, § 1 et seq.; Amend. 1; District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Meetings.

District of Columbia Board of Education's adoption of evaluative standards by which to assess the performance of the present superintendent of schools was not a "final policy decision" within the meaning of statute providing, in part, that "no final policy decision on such other matters may be made by the Board of Education in a meeting (or part thereof) closed to the public." D.C. Code § 31-101(e). *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

Given the express intent of Congress to allow certain meetings of the District of Columbia Board of Education to be closed and the embodiment of that intent in a specific statute, that statute remained in effect as a qualification of later statute requiring meetings of the District government to be open to the public. *District of Columbia Self-Government and Governmental Reorganization Act*, §§ 742(a), 761, 87 Stat. 774; D.C. Code § 31-101(e). *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

Powers of judiciary.

The official act of a judge of the United States

District Court for the District of Columbia in participating in selection of District of Columbia board of education members does not in and of itself preclude on due process grounds the ability of the judge to decide fairly the merits of litigation challenging validity of performance by board member of his duties as such. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

Validity of prior provisions.

Pupils in public schools administered by District of Columbia board of education and parents of those pupils had sufficient interest to challenge authority of the board to administer the schools on theory that statute providing that members of board shall be appointed by United States District Court judges of the District of Columbia is unconstitutional. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

The fact that issue of basic authority of District of Columbia board of education to administer schools might escape resolution unless pupils and their guardians or parents had standing to challenge validity of statute purportedly giving that authority argued for resolving doubts, if any, as to standing in favor of the pupils, parents, and guardians, in absence of hard and fast rule governing standing to sue. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

Power conferred upon judges by statute stating that members of District of Columbia board of education shall be appointed by United States District Court judges of District of Columbia does not violate doctrine of separation of powers. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

Appointive power conferred by Congress under statute providing that members of District of Columbia board of education shall be appointed by United States District Court judges of the District of Columbia does not violate due process though litigation might arise before the district court over manner in which the board administers the schools. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C.1967).

Constitutional provision that Congress may by law vest appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in heads of departments empowered Congress to enact statute providing that members of the District of Columbia board of education shall be appointed by United States District Court judges of the District of Columbia. U.S. Const. art. 2, § 2, cl. 2; D.C. Code 1961, § 31-101. *Hobson v.*

Hansen, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C1967).

The fact that in a number of instances Congress has conferred appointive power upon court or judges of United States District Court for the District of Columbia was not conclusive on issue of validity of statute permitting appointment of members of District of Columbia board of education by United States District Court judges of the District of Columbia but demonstrated the deep-seated congressional view of the constitutional issue and was entitled to weight in judicial decision on that issue. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C1967).

The validity of congressional conference upon United States District Court judges of District of Columbia of power to appoint District of Columbia board of education members is not to be denied merely because an appointee in carrying out his own separation functions might become involved in controversies; the board members are accountable under the law for the manner in which they perform their duties. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C1967).

Court could not presume that in any future case, which might involve performance by members of District of Columbia board of education of their duties, a denial of due process would occur by reason of statute empowering United States District Court judges of the District of Columbia to appoint the board members. D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C1967).

Constitutional provision empowering Congress to exercise exclusive legislation in all cases whatsoever over the District of Columbia gave Congress power to enact statute providing that members of the District of Columbia board of education shall be appointed by United States District Court judges of the district. U.S. Const. art. 1, § 8, cl. 17; D.C. Code 1961, § 31-101. *Hobson v. Hansen*, 265 F.Supp. 902, 1967 U.S. Dist. LEXIS 11602 (D.D.C1967).

Issue as to constitutionality or unconstitutionality of statute, authorizing members of board of education of public schools of District of Columbia to be appointed by United States District Court judges was not frivolous and matter must be referred to three-judge court. D.C. Code 1961, § 31-101; 18 U.S.C. §§ 2282, 2284. *Hobson v. Hansen*, 252 F. Supp. 4, 1966 U.S. Dist. LEXIS 7783 (D.D.C1966).

§ 38-102. General policies; expenditures; appointment of employees.

(a) The Board of Education shall determine all questions of general policy relating to the schools and the Superintendent shall implement such policy. The Board of Education shall appoint and evaluate the Superintendent who shall be responsible for the day-to-day operation of the schools.

(b) The Board of Education shall, at least every 2 years, adopt and publish an Education Policy Agenda that establishes spending priorities, goals and objectives; that establishes the organizational chart for the District of Columbia Public Schools; and that recognizes the policy-setting role of the Board and the management role of the Superintendent. In the course of preparing the Agenda, the Board of Education and the Superintendent shall take into account the recommendations of the Mayor, community and parent organizations, and recognized experts in the fields of education and finance. The Agenda shall be published in the D.C. Register and newspapers of general circulation.

(c) The Board of Education shall hire the Superintendent of Schools who shall be the chief executive officer for District of Columbia Public Schools, serve as a nonvoting member of the Board, and be responsible for the operations of the schools. The Board and Superintendent shall negotiate a performance contract setting forth the specific responsibilities of the Superintendent and shall make the contract available to the public on request. The Board shall have the authority to remove the Superintendent.

(d) The Board of Education shall establish personnel policies and guidelines

for the hiring of principals and other personnel by the Superintendent, but shall not make or approve personnel decisions or negotiate with representatives of employee organizations.

(e) The Board of Education shall establish guidelines and goals for academic achievement.

(June 20, 1906, 34 Stat. 317, ch. 3446, § 2(g); Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(b); July 18, 2000, D.C. Law 13-149, § 3, 47 DCR 4639; Mar. 25, 2009, D.C. Law 17-353, § 206, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 31-102. 1973 Ed., § 31-103.

Effect of amendments. — D.C. Law 13-149 rewrote this section, which formerly read:

“The Board shall determine all questions of general policy relating to the schools, shall appoint the executive officers hereinafter provided for, define their duties, and direct expenditures. All expenditures of public funds for such school purposes shall be made and accounted for as now provided by law under the direction and control of the Mayor of the District of Columbia. The Board shall appoint all teachers in the manner hereinafter prescribed and all other employees provided for in this chapter.”

Section 7 of D.C. Law 13-149 provided: “This act shall apply upon the effective date of the School Governance Charter Amendment Act of 2000.”

D.C. Law 17-353, in the section credit, validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) addition, see § 2 of the District of Columbia Public Schools Partnership Emergency Act of 2012 (D.C. Act 19-395, July 18, 2012, 59 DCR 8703).

Legislative history of Law 13-149. — For D.C. Law 13-149, see notes following § 38-101.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Editor’s notes. — Establishment of District of Columbia Advisory Committee on Education: See Mayor’s Order 89-256, November 7, 1989.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Construction with other laws.

Employment and discharge of personnel.

Labor relations and collective bargaining.

Powers, generally.

Special needs, handicapped and exceptional children.

Superintendent.

Teacher compensation, generally.

Construction with other laws.

District of Columbia Board of Education was subject to statutory authority of District of Columbia Financial Responsibility and Man-

agement Assistance Authority to issue orders, rules or regulations, despite contentions that overall grant of authority in enabling statute did not extend to independent agencies such as Board and that statutory direction to Authority to preserve principle of Home Rule exempted independent agencies from Authority’s reach; enabling statute gave Authority authority to take any action valid if taken by head of independent agency, statutory grant of authority employed broad and inclusive language, and exclusion of Board from Authority’s authority would have made no sense in light of purposes of enabling statute and Congress’ specific state-

ment that Authority was to address problems in District of Columbia's schools. District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

District of Columbia Financial Responsibility and Management Assistance Authority acted within its Congressionally delegated authority in issuing order delegating to District's Board of Trustees power of District's Board of Education to run District's schools, subject to Authority's supervision, where Board of Education would have been entitled to delegate its authority in same manner. District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97; D.C. Code 1981, § 31-107. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

In determining intent of Congress with respect to delegation of its plenary power to run schools in District of Columbia, court must look to circumstances of enactment of statute creating District of Columbia Financial Responsibility and Management Assistance Authority; congressional intent can be understood only in light of context in which Congress enacted statute and policies underlying its enactment. District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Employment and discharge of personnel.

Although board of education failed to comply with statute governing dismissal of teachers, trial court remedy of reinstating teachers to their prospective positions and awarding them back pay and other benefits was premature inasmuch as renewed proceeding before board of education would enable required procedure of dismissal to be followed. D.C. Code 1973, § 31-102. *District of Columbia v. Montgomery*, 453 A.2d 808, 1982 D.C. App. LEXIS 503 (1982).

Where issue of delegation of powers of board of education and superintendent of schools was not raised in connection with cross motions for summary judgment as to District of Columbia's compliance with statute requiring that teacher's termination be effected by board of educa-

tion and only upon written recommendation of superintendent, point was not preserved for appeal. D.C. Code 1973, § 31-102 (repealed). *District of Columbia v. Gray*, 452 A.2d 962, 1982 D.C. App. LEXIS 486 (1982).

Issue of whether teacher's claim that her employment was not properly terminated in accordance with requirements of statute was barred by laches was not properly preserved for appeal where, although defense was raised in support of motion to dismiss teacher's original complaint, motion to dismiss original complaint was not pursued after teacher filed amended complaint, only boilerplate reference to laches defense was made in answer to amended complaint, and defense was not mentioned in opposition to teacher's motion for summary judgment. Civil Rule 56(c); D.C. Code 1973, § 31-102 (repealed). *District of Columbia v. Gray*, 452 A.2d 962, 1982 D.C. App. LEXIS 486 (1982).

Award of back pay and reinstatement to discharged high school teacher based solely upon board of education's failure to comply with requirements of statute that teacher's termination be effected by board of education and only upon written recommendation of superintendent of schools was error; proper disposition was to remand to board of education for compliance with procedures outlined in statute. D.C. Code 1973, § 31-102 (repealed). *District of Columbia v. Gray*, 452 A.2d 962, 1982 D.C. App. LEXIS 486 (1982).

Discharged high school teacher was not automatically entitled to back pay and reinstatement on basis that she was denied procedural due process, but was entitled to remand to board of education so that required procedures might be followed in order to determine whether she should have been terminated. U.S. Const. Amends. 5, 14; 42 U.S.C. § 1983; D.C. Code 1973, § 31-102 (repealed). *District of Columbia v. Gray*, 452 A.2d 962, 1982 D.C. App. LEXIS 486 (1982).

Discharged high school teacher was not, as opposed to being entitled to appropriate relief if, upon further proceedings, it was determined that she should not have been dismissed, entitled to nominal damages for procedural due process violation per se. U.S.C. Const. Amends. 5, 14; 42 U.S.C. § 1983; D.C. Code 1973, § 31-102 (repealed). *District of Columbia v. Gray*, 452 A.2d 962, 1982 D.C. App. LEXIS 486 (1982).

District of Columbia Board of Education had authority to make procedural rules of delegation and operation, which included a power to delegate its authority to dismiss employees to Board's committee on board operations, rules, policies and legislation, where Congress gave Board power to adopt rules and regulations, rules and regulations of Board had full force and effect unless they were in conflict with

express statutory prohibitions, and statute mandating that no dismissal shall be made by Board of Education except upon written recommendation of superintendent of schools did not mandate action by entire Board. D.C. Code 1973, § 31-102. *District of Columbia v. White*, 435 A.2d 1055, 1981 D.C. App. LEXIS 366 (1981).

Superintendent of school's personal direction to dismiss school system employee satisfied his statutory obligation that no dismissal was to be made by Board of Education except upon written recommendation of superintendent of schools, notwithstanding superintendent's failure to sign actual termination letter, since superintendent did not delegate his decision-making function, but decided to dismiss employee based on oral and written reports from employee's regional superintendent and then instructed director of personnel to perform ministerial function of preparing dismissal letter to effectuate decision superintendent already had made. D.C. Code 1973, § 31-102. *District of Columbia v. White*, 435 A.2d 1055, 1981 D.C. App. LEXIS 366 (1981).

Where acceptance form specified that position of principal in District of Columbia regular summer school program was subject to approval by the Board of Education, and no such approval was forthcoming, no binding contract of employment existed before applicant was notified that she did not meet revised criteria for appointment, and hence applicant was not entitled to recover for loss of income following withdrawal of her appointment as principal, although offer of appointment stated that appointment was subject to full funding of program, which it received. D.C. Code §§ 31-102, 31-103. *Board of Education v. Wilson*, 290 A.2d 400, 1972 D.C. App. LEXIS 380 (1972).

Labor relations and collective bargaining.

Beginning date of school year and Good Friday's status as holiday were not mandatory subjects of collective bargaining, and thus Board of Education's determination of issues without consulting teachers' union did not constitute unfair labor practice; administrative agency was entitled to determine that Board's right to establish educational policy outweighed incidental impact of its calendar decisions upon teachers' interests. D.C. Code 1981, §§ 1-613.1(a), 1-618.8(a), 31-102. *Public Employee Relations Bd. v. Washington Teachers' Union Local 6*, 556 A.2d 206, 1989 D.C. App. LEXIS 51 (1989).

The duty status of Good Friday and the starting date of the school year fall within the scope of basic work scheduling and terms and conditions of employment under the act. In accordance with the Comprehensive Merit Personnel Act, the teachers have a right to bargain concerning these subjects. *Washington Teach-*

ers' Union Local 6 v. District of Columbia, 115 WLR 1057 (Super. Ct.).

Powers, generally.

Change in powers of District of Columbia Board of Education effected by order of District of Columbia Financial Responsibility and Management Assistance Authority pursuant to statute did not affect right of District's voters to vote in manner proscribed by Fifth Amendment; Fifth Amendment did not require that elected school board have any particular powers, especially in District of Columbia where creation of Board of Education and its manner of selection fell squarely within plenary legislative power of Congress. U.S. Const. Amend. 5; *District of Columbia Financial Responsibility and Management Assistance Act of 1995*, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Members of District of Columbia Board of Education had no cognizable First Amendment claim that District of Columbia Financial Responsibility and Management Assistance Authority impermissibly diluted their rights as individual voters by diminishing powers of Board of Education, an elected body; Board members were not denied right to vote vis-a-vis other residents, their rights were not restricted for impermissible reason such as race or gender, and they were not subjected to outright denial of their right to vote. U.S. Const. Amend. 1; *District of Columbia Financial Responsibility and Management Assistance Act of 1995*, § 1 et seq., 109 Stat. 97. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Special needs, handicapped and exceptional children.

Conduct of District of Columbia Board of Education in denying children, who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, and their class all publicly supported education while providing such education to other children violated due process clause. U.S. Const. Amend. 5; D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Due process of law required a hearing before children, who had been labeled behavioral problems, mentally retarded, emotionally disturbed or hyperactive, were suspended or expelled from regular schooling in public sup-

ported schools or reassigned for specialized instruction. U.S. Const. Amend. 5; D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Board of Education of District of Columbia had responsibility for implementation of judgment and decree of court requiring that publicly supported education be provided for exceptional and handicapped children. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Inadequacies of District of Columbia public school system, whether occasioned by insufficient funding or administrative inefficiency, could not be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Failure of Board of Education of District of Columbia to provide publicly supported education for "exceptional" children by including and retaining them in public school system or otherwise providing them with publicly supported education and failure to afford them hearing and periodical review could not be excused by claim that there were insufficient funds. U.S. Const. Amend. 5; D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

No child eligible for publicly supported education in District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy or practice of Board of Education of District of Columbia or its agents unless child is provided adequate alternative educational services suited to child's needs, which may include special education or tuition grants, and a constitutionally adequate prior hearing and periodic review of child's status, progress, and adequacy of any educational alternative. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Board of Education of District of Columbia has obligation to provide whatever specialized instruction that will benefit child determined to have behavioral problems, to be mentally retarded, or to be emotionally disturbed or hyperactive. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

District of Columbia Board of Education by failing to provide children, who had been la-

beled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, and the class they represented with publicly supported specialized education violated controlling statutes and Board's own regulations. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

If sufficient funds were not available to finance all of services and programs that were needed and desirable in public school system, then available funds must be expended equitably in such manner that no child was entirely excluded from publicly supported education consistent with his needs and ability to benefit therefrom. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Superintendent.

The term "superintendent," as used in statutory scheme and contract, envisioned an employer-employee relationship between the District of Columbia Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the present superintendent were not held to terminate the superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and were properly subject to closed sessions. D.C. Code §§ 31-101(e), 31-105, 31-108. *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

Teacher compensation, generally.

Where District's elementary schools which had 74% white enrollment had 15.5% smaller pupil-teacher ratio, 9.7% greater average teacher cost and 26.7% greater teacher expenditure per pupil than did elementary schools which had 98% black enrollment, notwithstanding contentions that discrepancies were random, were due to technological reasons beyond defendants' control, and were inconsequential, right to equal educational opportunity was being denied, and it would be ordered that per pupil expenditures for teachers' salaries and benefits in any elementary school not deviate, except for adequate justification, by more than 5% from mean per pupil expenditure for teachers' salaries and benefits at all elementary schools in District. Elementary and Secondary Education Act of 1965, §§ 101, 105, as amended, 20 U.S.C. §§ 241a, 241e. *Hobson v. Hansen*, 327 F. Supp. 844, 1971 U.S. Dist. LEXIS 13130 (1971).

§ 38-103. Annual estimates. [Repealed].

Repealed.

(June 20, 1906, 34 Stat. 317, ch. 3446, § 2(h); Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(b); Oct. 5, 1985, D.C. Law 6-48, § 2, 32 DCR 4583; Apr. 17, 1995, 109 Stat. 116, Pub. L. 104-8, § 202(g)(1); June 12, 2007, D.C. Law 17-9, § 1003(b), 54 DCR 4102; Mar. 21, 2009, D.C. Law 17-325, § 2, 56 DCR 499; Sept. 24, 2010, D.C. Law 18-223, § 4034, 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 31-103. 1973 Ed., § 31-104.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Public Schools Hearing Emergency Amendment Act of 2009 (D.C. Act 18-11, February 25, 2009, 56 DCR 1915).

For temporary (90 day) repeal of section, see § 4034 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 6-48. — Law 6-48 was introduced in Council and assigned Bill No. 6-252, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-67 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-9. — Law 17-9, the “Public Education Reform Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-1, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on April 23, 2007, it was assigned Act No. 17-38 and transmitted to both Houses of Congress for its review. D.C. Law 17-9 became effective on June 12, 2007.

Legislative history of Law 17-325. — Law 17-325, the “Public School Hearing Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-942 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respec-

tively. Approved without the Mayor’s signature on December 24, 2008, it was assigned Act No. 17-630 and transmitted to both Houses of Congress for its review. D.C. Law 17-325 became effective on March 21, 2009.

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Home Rule Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-104. Exemption from personal liability and security or bond requirement.

The members of the Board of Education of the District of Columbia shall not be personally liable in damages for any official action of the Board performed in good faith in which the members participate; nor shall any member of the Board be liable for any costs that may be taxed against them or the Board on account of any such official action by them as members of the Board; but such costs shall be charged to the District of Columbia and paid as other costs are

paid in suits brought against the municipality; nor shall the said Board or any of its members be required to give any supersedeas bond or security for costs or damages on any appeal whatever.

(June 20, 1906, 34 Stat. 316, ch. 3446, § 2(i); Jan. 26, 1929, 45 Stat. 1139, ch. 105; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(b).)

Prior Codifications. — 1981 Ed., § 31-105. 1973 Ed., § 31-104a.

CASE NOTES

ANALYSIS

Capacity to sue or be sued.

In general.

Purpose.

Capacity to sue or be sued.

A suit for damages against the District of Columbia Board of Education cannot survive, as statute creating that Board does not provide that the Board is a body corporate having the capability to sue or be sued. D.C. Code 1981, § 31-101 et seq. *Parker v. District of Columbia*, 588 F. Supp. 518, 1983 U.S. Dist. LEXIS 15030 (1983).

The District of Columbia Board of Education and Board of Commissioners were not entities and therefore were not subject to suit, although their respective members were properly sued for injunctive relief in respect to education of Negro deaf children in the District. D.C. Code 1940, §§ 31-1008, 31-1011. *Miller v. Board of Ed. of District of Columbia*, 106 F.Supp. 988, 1952 U.S. Dist. LEXIS 4117 (D.D.C.1952).

Under the statutes which created the District of Columbia Board of Education, the Board was

not a suable entity. D.C. Code § 31-101(a). *Kelley v. Morris*, 400 A.2d 1045, 1979 D.C. App. LEXIS 343 (1979).

In general.

Members of the District of Columbia Board of Education are not subject to liability for any official action of the Board performed in good faith. *Parker v. District of Columbia*, 588 F. Supp. 518, 1983 U.S. Dist. LEXIS 15030 (1983).

Members of the District of Columbia Board of Education were immune from personal liability for their official actions. D.C. Code § 31-104a. *Kelley v. Morris*, 400 A.2d 1045, 1979 D.C. App. LEXIS 343 (1979).

Purpose.

The clear purpose of the statute which provides that members of the District of Columbia Board of Education shall not be personally liable in damages for any official action taken in good faith was to allow citizens to serve as board members without endangering their personal financial security. D.C. Code § 31-104a. *Kelley v. Morris*, 400 A.2d 1045, 1979 D.C. App. LEXIS 343 (1979).

§ 38-105. Superintendent; appointment; term of office; duties. [Repealed].

Repealed.

(June 20, 1906, 34 Stat. 317, ch. 3446, § 3(1); Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d); Mar. 3, 1979, D.C. Law 2-139, § 3204(h), 25 DCR 5740; June 12, 2007, D.C. Law 17-9, § 1003(c), 54 DCR 4102.)

Cross references. — Annual school census, see §§ 31-204—31-206.

Ceremonial expenses, see § 38-914.

Excusing children who are regularly employed from school attendance, see § 38-202.

License taxes, regulated non-health related occupations and professions, see § 47-2853.04.

Official expenses, see § 38-915.

Removal of Superintendent, see § 38-106.

Textbooks and supplies, recommendations for purchase, see § 38-704.

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 31-107. 1973 Ed., § 31-105.

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-103.

CASE NOTES

ANALYSIS

Administration of school affairs.
Discharge of superintendent.
Meetings.

Administration of school affairs.

District of Columbia Financial Responsibility and Management Assistance Authority acted within its Congressionally delegated authority in issuing order delegating to District's Board of Trustees power of District's Board of Education to run District's schools, subject to Authority's supervision, where Board of Education would have been entitled to delegate its authority in same manner. District of Columbia Financial Responsibility and Management Assistance Act of 1995, § 1 et seq., 109 Stat. 97; D.C. Code 1981, § 31-107. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 964 F. Supp. 416, 1997 U.S. Dist. LEXIS 5929 (1997), affirmed in part and reversed in part by 132 F.3d 775, 328 U.S. App. D.C. 74, 1998 U.S. App. LEXIS 83 (1998).

Discharge of superintendent.

District of Columbia Financial Responsibility and Management Assistance Authority's orders which created and delegated powers to Board of

Trustees and permitted Authority to discharge existing school superintendent at will were inconsistent with scope of powers of existing Board of Education, and thus exceeded Authority's power to issue orders that could be issued by Board of Education. D.C. Code 1981, §§ 31-107, 31-110. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 132 F.3d 775, 1998 U.S. App. LEXIS 83 (C.A.D.C. 1998).

Meetings.

The term "superintendent," as used in statutory scheme and contract, envisioned an employer-employee relationship between the District of Columbia Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the present superintendent were not held to terminate the superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and were properly subject to closed sessions. D.C. Code §§ 31-101(e), 31-105, 31-108. *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

§ 38-106. Removal of Superintendent. [Repealed].

Repealed.

(June 20, 1906, 34 Stat. 317, ch. 3446, § 3(2); Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d); June 12, 2007, D.C. Law 17-9, § 1003(d), 54 DCR 4102.)

Prior Codifications. — 1981 Ed., § 31-110.
1973 Ed., § 31-108.

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-103.

CASE NOTES

In general.

District of Columbia Financial Responsibility and Management Assistance Authority's orders which created and delegated powers to Board of Trustees and permitted Authority to discharge existing school superintendent at will were inconsistent with scope of powers of existing Board of Education, and thus exceeded Authority's power to issue orders that could be issued by Board of Education. D.C. Code 1981, §§ 31-107, 31-110. *Shook v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth.*, 132 F.3d 775, 1998 U.S. App. LEXIS 83 (C.A.D.C. 1998).

The term "superintendent," as used in statu-

tory scheme and contract, envisioned an employer-employee relationship between the District of Columbia Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the present superintendent were not held to terminate the superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and were properly subject to closed sessions. D.C. Code §§ 31-101(e), 31-105, 31-108. *Goodwin v. District of Columbia Board of Education*, 343 A.2d 63, 1975 D.C. App. LEXIS 221 (1975).

§ 38-107. Supervisor of Manual Training.

There shall be appointed by the Board a Supervisor of Manual Training who, under the direction of the Superintendent, shall have supervision of manual training instruction.

(June 20, 1906, 34 Stat. 317, ch. 3446, § 3(6); Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d).)

Prior Codifications. — 1981 Ed., § 31-111. 1973 Ed., § 31-111.

§ 38-108. Classification by correlated subjects.

The Board of Education shall classify all academic and scientific subjects in the Central, Eastern, Western, and Business High Schools, and the McKinley Manual Training School into 8 departments so that each department shall contain correlated subjects, and the M Street High School and the Armstrong Manual Training School shall be similarly classified into 4 departments so that each department shall contain correlated subjects.

(June 20, 1906, 34 Stat. 319, ch. 3446, § 5(1); Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d).)

Prior Codifications. — 1981 Ed., § 31-112. 1973 Ed., § 31-112.

§ 38-109. Head of department; head teacher; class size limitation.

Whenever a department includes 2 or more high schools, then the teacher in charge of the department shall be designated “head of the department,” otherwise the teacher in charge of the department shall be designated “head teacher”; provided, that heads of departments as such have only an advisory capacity in educational matters and upon all questions shall be inferior in authority to the principal of each particular school; provided further, that no class shall be formed in the high schools with less than 10 pupils for a period not longer than 15 days.

(June 20, 1906, 34 Stat. 319, ch. 3446, § 5(2).)

Prior Codifications. — 1981 Ed., § 31-113. 1973 Ed., § 31-113.

**§ 38-110. Qualifications required of teachers and officials.
[Repealed].**

Repealed.

(June 20, 1906, 34 Stat. 319, ch. 3446, § 6; June 26, 1912, 37 Stat. 156, ch. 182; Feb. 25, 1929, 45 Stat. 1276, ch. 314, § 1; Mar. 16, 1982, D.C. Law 4-78, § 14, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-114. **Legislative history of Law 4-78.** — Law 4-78 was introduced in Council and assigned

Bill No. 4-326, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1981 and November 24, 1981, respectively. Signed by

the Mayor on December 15, 1981, it was assigned Act No. 4-126 and transmitted to both Houses of Congress for its review.

§ 38-111. Investigation or trial of teacher.

When a teacher is on trial or being investigated he or she shall have the right to be attended by counsel and by at least 1 friend of his or her selection.

(June 20, 1906, 34 Stat. 321, ch. 3446, § 10.)

Prior Codifications. — 1981 Ed., § 31-115. 1973 Ed., § 31-116.

§ 38-112. Masculine pronoun to include both male and female.

Wherever the masculine pronoun occurs in this chapter it shall be construed to apply to either male or female teachers or employees of the Board of Education.

(June 20, 1906, 34 Stat. 321, ch. 3446, § 12; Apr. 22, 1968, 82 Stat. 102, Pub. L. 90-292, § 3(d).)

Prior Codifications. — 1981 Ed., § 31-116. 1973 Ed., § 31-117.

Subchapter I-A. Annual Budget Submission Inclusions.

§ 38-121.01. District of Columbia Public Schools use of private funds.

(a) The annual District of Columbia Public Schools (“DCPS”) budget submission shall identify and list all donations, whether monetary or gifts in kind, of \$100,000 or more, donated to DCPS, in a single donation or in multiple donations by a benefactor, for its benefit or purpose, whether directly or indirectly.

(b) The Mayor shall submit an annual report, along with the budget submission, on the use of non-government funds that specifies for each benefactor:

- (1) Name and address;
- (2) Amount of the planned or actual expenditure donation;
- (3) The intended use of the donation; and
- (4) The specific goods or services purchased on behalf of or donated to DCPS.

(c) For the purposes of this subchapter, the term “donation” means any gift, grant, devise, or bequest of any real or personal property, or other type of asset.

(Sept. 24, 2010, D.C. Law 18-223, § 4042, 57 DCR 6242.)

Emergency legislation. — For temporary 2011 Budget Support Emergency Act of 2010 (90 day) addition, see § 4042 of Fiscal Year (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to

both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 4041 of D.C. Law 18-223 provided that subtitle E of title IV of the act may be cited as the “Use of Private Funds Reporting Requirement Act of 2010”.

§ 38-121.02. District of Columbia Public Schools performance measures standardization.

(a)(1) By January 1, 2011, the District of Columbia Public Schools, shall submit, in accordance with § 1-204.56a, comprehensive, measurable, objective agency performance measures that are to be included in the next 4 budget submissions for the purposes of measuring the agency’s performance in certain areas, including student outcomes, recruitment and retention of teachers and principals, management and business operations, and parent and community involvement.

(2) Beginning in 2012, this information shall be submitted by January 31 of each year in accordance with subsection (b) of this section to the Council for review and comment.

(b) A performance measure shall be included in the budget submission that includes at least one year of actual data. Once included in a budget submission, a performance measure shall be included in its original form for at least 4 successive years.

(Sept. 24, 2010, D.C. Law 18-223, § 4052, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition, see § 4052 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-121.01.

Short title. — Short title: Section 4051 of D.C. Law 18-223 provided that subtitle F of title IV of the act may be cited as the “DCPS Performance Measures Standardization Act of 2010”.

Subchapter II. Chancellor.

§ 38-131. Provisional duties of the Chancellor.

The Chancellor of the District of Columbia Public Schools is authorized to accept the resignation or the application for retirement of any employee, to grant leave of absence to any employee, to extend or terminate any temporary appointment, and to make all changes in personnel and appointments growing out of such resignation, retirement, leave of absence, termination of temporary appointment, or caused by the decease or suspension of any employee.

(Apr. 22, 1932, 47 Stat. 134, ch. 131, § 1; June 12, 2007, D.C. Law 17-9, § 1004, 54 DCR 4102.)

Section references. — This section is referred to in § 38-132.

Prior Codifications. — 1981 Ed., § 31-108. 1973 Ed., § 31-106.

Effect of amendments. — D.C. Law 17-9, in the section heading, substituted “Chancellor” for “Superintendent”; and rewrote the section, which had read as follows: “The Superintendent of Schools of the District of Columbia is authorized to accept the resignation or the application for retirement of any employee, to grant leave of absence to any employee, to extend or terminate any temporary appointment, and to make all changes in personnel and appointments growing out of such resignation,

retirement, leave of absence, termination of temporary appointment, or caused by the decrease or suspension of any employee, or the organization of a new class or classes, and to perform such other duties necessary for the operation of the public school system as may be authorized by the Board of Education, provisionally and until the next regular meeting of the Board of Education.”

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

§ 38-132. Authority of acting Superintendent.

The authority conferred on the Superintendent of Schools by § 38-131 shall, during his authorized absence, devolve on the person designated as acting Superintendent of Schools.

(Apr. 22, 1932, 47 Stat. 134, ch. 131, § 2.)

Prior Codifications. — 1981 Ed., § 31-109. 1973 Ed., § 31-107.

Subchapter III. Miscellaneous Provisions.

§ 38-151. Normal schools.

The Board of Education shall have power to make all necessary rules and regulations for the organization and government of the normal schools, to prescribe the course of study to be pursued therein, and to fix terms for the admission and graduation of pupils; provided, that the Board of Education is hereby authorized, under appropriations hereafter to be made, to expand the 2 existing normal schools into teachers’ colleges, and at the end of the 4th year thereof to award appropriate degrees.

(June 23, 1873, p. 50, ch. 8, § 3; Feb. 25, 1929, 45 Stat. 1276, ch. 314, § 1.)

Cross references. — Board of higher education, control of the District of Columbia Teachers College, see § 38-1103.

Prior Codifications. — 1981 Ed., § 31-117. 1973 Ed., § 31-118.

CASE NOTES

In general.

Where the board of education and superintendent of schools of the District of Columbia interpreted for many years statute permitting pupils whose parents are employed in the District of Columbia but who reside out of the District, to be admitted and taught free of charge in the schools of the District, as extend-

ing the right to graduate as well as to undergraduate schools, and it was inconceivable that Congress was not advised of such interpretation, the interpretation was legislatively adopted and a contrary interpretation could not be urged. Act March 3, 1915, 38 Stat. 910. *Cavanagh v. Ballou*, 36 F.Supp. 445, 1941 U.S. Dist. LEXIS 3892 (D.D.C1941).

§ 38-152. Education of pages.

The Board of Education of the District of Columbia is hereby authorized to employ such personnel for the education of pages as may be required and to

pay compensation for such services in accordance with such rates of compensation as the Board of Education may prescribe.

(July 10, 1972, 86 Stat. 441, Pub. L. 92-342, § 101; Aug. 5, 1977, 91 Stat. 671, Pub. L. 95-94, title I.)

Prior Codifications. — 1981 Ed., § 31-118. 1973 Ed., § 31-121.

§ 38-153. Coordination of municipal programs.

(a) The Board of Education and the Mayor of the District of Columbia shall jointly develop procedures to assure the maximum coordination of educational and other municipal programs and services in achieving the most effective educational system and utilization of educational facilities and services to serve broad community needs. Such procedures shall cover such matters as:

(1) Design and construction of educational facilities to accommodate civic and community activities such as recreation, adult and vocational education and training, and other community purposes;

(2) Full utilization of educational facilities during nonschool hours for community purposes;

(3) Utilization of municipal services, such as police, sanitation, recreational, and maintenance services to enhance the effectiveness and stature of the school in the community;

(4) Arrangements for cost-sharing and reimbursements on school and community programs involving utilization of educational facilities and services; and

(5) Other matters of mutual interest and concern.

(b) The Board of Education may invite the Mayor of the District of Columbia or his designee to attend and participate in meetings of the Board on matters pertaining to coordination of educational and other municipal programs and services and on such other matters as may be of mutual interest.

(Apr. 22, 1968, 82 Stat. 107, Pub. L. 90-292, § 5.)

Cross references. — Use of school buildings, negotiation and approval, see § 38-401.

Prior Codifications. — 1981 Ed., § 31-106. 1973 Ed., § 31-104b.

Mayor's Orders. — Establishment—D.C. State Advisory Council on Adult Education participatory planning committee: See Mayor's Order 90-179, November 29, 1990.

Editor's notes. — Establishment of District of Columbia Advisory Council on Education: See Mayor's Order 89-256, November 7, 1989.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Colum-

bia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-154. Annual Board of Education report and budget revision. [Repealed].

Repealed.

(Sept. 30, 1994, 108 Stat. 2594, Pub. L. 103-334, § 143; Apr. 9, 1997, D.C. Law 11-255, § 32, 44 DCR 1271; July 18, 2000, D.C. Law 13-149, § 4, 47 DCR 4639; June 12, 2007, D.C. Law 17-9, § 1005, 54 DCR 4102; Mar. 25, 2009, D.C. Law 17-353, § 203(e), 56 DCR 1117; Sept. 24, 2010, D.C. Law 18-223, § 4035, 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 31-104.2.

Emergency legislation. — For temporary (90 day) repeal of section, see § 4035 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Novem-

ber 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 13-149. — For D.C. Law 13-149, see notes following § 38-101.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

§ 38-155. Adoption and use of seal.

The Mayor is hereby authorized to adopt, alter and use a seal which shall be judicially noticed, and to prescribe rules and regulations as may be deemed necessary to implement this section.

(Aug. 2, 1978, D.C. Law 2-96, § 2, 25 DCR 1272; June 12, 2007, D.C. Law 17-9, § 1006, 54 DCR 4102.)

Prior Codifications. — 1981 Ed., § 31-119. 1973 Ed., § 31-122.

Effect of amendments. — D.C. Law 17-9 substituted “The Mayor” for “The Board of Education of the District of Columbia”.

Legislative history of Law 2-96. — Law 2-96 was introduced in Council and assigned Bill No. 2-111, which was referred to the Committee on Education, Recreation and Youth

Affairs. The Bill was adopted on first and second readings on April 18, 1978, and May 2, 1978, respectively. Signed by the Mayor on May 26, 1978, it was assigned Act No. 2-200 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

§ 38-156. Power to raze buildings; limitations.

The Mayor, with the consent of the Council by resolution, shall have the power to raze structures. The razing of any building, structure, or part of any building or structure that is on the National Register of Historic Places, the District of Columbia inventory of historic sites, or for which application for one of these listings is pending, shall not be approved.

(June 20, 1906, ch. 3446, § 14, as added Sept. 11, 1990, D.C. Law 8-158, § 3, 37 DCR 4167; Apr. 12, 1997, D.C. Law 11-259, § 311, 44 DCR 1423; Oct. 19, 2000, D.C. Law 13-172, § 703, 47 DCR 6308; June 12, 2007, D.C. Law 17-9, § 1003(e), 54 DCR 4102.)

Prior Codifications. — 1981 Ed., § 31-120.

Effect of amendments. — D.C. Law 13-172 deleted the concluding sentence providing: “Any contract services required to carry out

this purpose shall be procured through the Office of Contracting and Procurement.”

D.C. Law 17-9 substituted “The Mayor, with the consent of the Council by resolution,” for

"The Board of Education, upon the approval of the Mayor, and with the consent of the Council by resolution,".

Emergency legislation. — For temporary (90-day) authorization to fix and regulate salaries of teachers and other employees, see § 703 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 703 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 8-158. — Law 8-158 was introduced in Council and assigned Bill No. 8-383, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The

Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 9, 1997.

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Editor's notes. — Authorization to charge fees for educational courses: For temporary authorization of the District of Columbia Board of Education to charge fees for select adult, community, and continuing education courses, see §§ 2-5 of the District of Columbia Board of Education Fees for Select Adult, Community, and Continuing Education Courses Emergency Act of 1994 (D.C. Act 10-299, July 25, 1994).

§ 38-157. Contracting out of food services operations and security services; development of management and data systems.

(a) Notwithstanding any other law, rule, or regulation, the District of Columbia Public Schools shall contract out, beginning in School Year 1995-96 and Fiscal Year 1996, all food services operations and security services for the D.C. Public Schools unless the Chancellor determines that it is not feasible.

(b) Notwithstanding any other law, rule, or regulation, the District of Columbia Public Schools shall contract out for no more than a 3-year period, beginning in School Year 1995-96 and Fiscal Year 1996, the development of new management and data systems, as well as training of currently employed personnel to use and manage these systems, in the areas of budget, finance, personnel/human resources, management information services, procurement, and supply management.

(March 5, 1996, D.C. Law 11-98, § 1203, 43 DCR 5; June 12, 2007, D.C. Law 17-9, § 1007, 54 DCR 4102.)

Prior Codifications. — 1981 Ed., § 31-121.

Effect of amendments. — D.C. Law 17-9 substituted "District of Columbia Public Schools" for "District of Columbia Board of Education" and "Chancellor" for "Superintendent".

Legislative history of Law 11-78. — Law 11-78, the "Budget Support Temporary Act of

1995," was introduced in Council and assigned Bill No. 11-421. The Bill was adopted on first and second readings on July 29, 1995, and October 10, 1995, respectively. Signed by the Mayor on October 31, 1995, it was assigned Act No. 11-150 and transmitted to both Houses of Congress for its review. D.C. Law 11-78 became effective on January 26, 1996.

Legislative history of Law 11-98. — Law 11-98, the “Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-440, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the

Mayor on December 26, 1995, it was assigned Act No. 11-181 and transmitted to both Houses of Congress for its review. D.C. Law 11-98 became effective on March 5, 1996.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

§ 38-158. Detail of officers to training program.

Pursuant to section 101(1)(c) and (d) of the Reserve Officers’ Training Corps Vitalization Act of 1964, approved October 13, 1964 (78 Stat. 1063; 10 U.S.C. § 2031(c) and (d)), the Board of Education, beginning in the 1995-96 School Year, shall request and ensure that active duty officers and noncommissioned officers of the U.S. Armed Forces be detailed as administrators and instructors to the District of Columbia Public Schools’ Junior Reserve Officers’ Training Corps program.

(March 5, 1996, D.C. Law 11-98, § 1204, 43 DCR 5.)

Prior Codifications. — 1981 Ed., § 31-122.

Emergency legislation. — For temporary addition of section, see § 1405 of the Budget Support Emergency Act of 1995 (D.C. Act 11-137, August 14, 1995, 42 DCR 4706) § 1405 of the Budget Support Legislative Review Emergency Act of 1995 (D.C. Act 11-154, November 9, 1995, 42 DCR 6569), and § 1204 of the Budget Support Congressional Review Emergency Act

of 1996 (D.C. Act 11-206, February 9, 1996, 43 DCR 777).

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 38-157.

Legislative history of Law 11-98. — For legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 38-157.

§ 38-159. Public school enrollment census.

(a) The State Education Office and the District of Columbia Public Schools shall hire an independent contractor to perform a census of the enrolled students in the D.C. Public Schools as well as the school employees, their job classifications, and duties.

(b) The independent contractor shall count the number of students enrolled in the District of Columbia Public Schools. The count shall include the information specified in § 38-1804.02(b).

(c) The independent contractor shall submit the census report to the Council, Mayor, and the Financial Authority on or before January 1, 1999, and in subsequent years as needed.

(Mar. 26, 1999, D.C. Law 12-175, § 702, 45 DCR 7193; Oct. 21, 2000, D.C. Law 13-176, § 8(d), 47 DCR 6835.)

Prior Codifications. — 1981 Ed., § 31-2853.42a.

Effect of amendments. — D.C. Law 13-176, in subsec. (a), substituted “State Education Office” for “Board of Education”.

Temporary Amendment of Section. — Section 4 of D.C. Law 13-199, repealed subsec. (b), and rewrote subsec. (a) to read as follows: “(a) The Board of Education and the District of Columbia Public Schools shall hire an inde-

pendent contractor to perform a census of the school employees of the District of Columbia Public Schools, their job classifications, and duties.”

Section 6(b) of the D.C. Law 13-199 provided that the act shall expire after 225 days of its having taken effect.

Section 4 of D.C. Law 14-38 repealed subsec. (b), and amended subsec. (a) to read as follows: “(a) The Board of Education and the District

of Columbia Public Schools shall hire an independent contractor to perform a census of the school employees of the District of Columbia Public Schools, their job classifications, and duties.”

Section 6(b) of D.C. Law 14-38 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary addition of section, see § 402 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 402 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90 day) amendment of section, see § 4 of the Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-453, November 7, 2000, 47 DCR 9406).

For temporary (90 day) amendment of section, see § 4 of Public School Enrollment Integrity Emergency Amendment Act of 2001 (D.C. Act 14-86, July 9, 2001, 48 DCR 6373).

For temporary (90 day) amendment of section, see § 4 of Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-192, November 29, 2001, 48 DCR 11239).

Legislative history of Law 12-175. — Law 12-175, the “Fiscal Year 1999 Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on the first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 13-176. — For D.C. Law 13-176, see notes following § 38-302.

Legislative history of Law 14-38. — Law 14-38, the “Public School Enrollment Integrity Temporary Amendment Act of 2001,” was introduced in Council and assigned Bill No. 14-242, which was retained by Council. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 12, 2001, it was assigned Act No. 14-100 and transmitted to both Houses of Congress for its review. D.C. Law 14-38 became effective on October 13, 2001.

Short title. — Public School Enrollment Census Act of 1998: Section 701 of D.C. Law 12-175 provided that title VII of the act may be cited as the “Public School Enrollment Census Act of 1998.”

§ 38-160. Public schools Schedule A submission.

The District of Columbia Public Schools shall submit to the Board of Education by January 1st and July 1st of each year a Schedule A showing all the current funded positions of the District of Columbia Public Schools, their compensation levels, and indicating whether the positions are encumbered. The Board of Education shall approve or disapprove each Schedule A within 30 days of its submission and provide the Council of the District of Columbia a copy of the Schedule A within 5 days of its approval.

(Nov. 13, 2003, D.C. Law 15-39, § 362, 50 DCR 5668.)

Emergency legislation. — For temporary (90 day) addition, see § 362 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003,” was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and

June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Short title. — Short title of subtitle G of title III of Law 15-39: Section 361 of D.C. Law 15-39 provided that subtitle G of title III of the act may be cited as the Public Schools Schedule A Submission Act of 2003.

§ 38-161. Attendance at Teachers College by foreign students.

Notwithstanding any other provision of law, not to exceed 25 foreign

students who are in the United States on valid unexpired student visas may be permitted to attend the District of Columbia Teachers College each year on the same basis, so far as payment of tuition and fees are concerned, as a resident of the District of Columbia. Admission to and attendance at such college by such students shall be subject to rules and regulations prescribed by the Board of Education of the District of Columbia.

(Apr. 23, 1958, 72 Stat. 98, Pub. L. 85-384, § 1.)

Historical Citations — 2001 Ed., § 38-301.
1981 Ed., § 31-601.
1973 Ed., § 31-301a.

References in text. — The District of Co-

lumbia Teachers College, referred to in this section, has been absorbed into the University of the District of Columbia pursuant to Chapter 12 of this title.

CHAPTER 1A. DISTRICT OF COLUMBIA PUBLIC SCHOOLS.

Sec.

38-171. District of Columbia Public Schools agency; establishment.

38-172. Mayor's authority; rulemaking.

38-173. Budget requirements of the District of Columbia Public Schools.

Sec.

38-174. Chancellor; appointment; duties.

38-175. Transfers; continuation.

§ 38-171. District of Columbia Public Schools agency; establishment.

Pursuant to § 1-204.04(b), the Council establishes the District of Columbia Public Schools ("DCPS") as a separate cabinet-level agency, subordinate to the Mayor, within the executive branch of the District of Columbia government.

(June 12, 2007, D.C. Law 17-9, § 102, 54 DCR 4102.)

Emergency legislation. — For temporary (90 day) addition of section, see § 4003 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 4082 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 4003 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

For temporary (90 day) addition of section, see § 4082 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 17-9. — Law 17-9, the "Public Education Reform Amend-

ment Act of 2007", was introduced in Council and assigned Bill No. 17-1, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on April 23, 2007, it was assigned Act No. 17-38 and transmitted to both Houses of Congress for its review. D.C. Law 17-9 became effective on June 12, 2007.

Mayor's Orders. — Final Action on Closings and Consolidations of District of Columbia Public Schools, see Mayor's Order 2011-42, February 11, 2011 (58 DCR 1497).

Editor's notes. — Applicability: Section 107 of Law 17-9 provided that this title shall apply upon Congressional enactment of Title IX. Congress enacted the provisions of Title IX in Pub. L. 110-33, approved June 1, 2007.

§ 38-172. Mayor's authority; rulemaking.

(a) The Mayor shall govern the public schools in the District of Columbia. The Mayor shall have authority over all curricula, operations, functions, budget, personnel, labor negotiations and collective bargaining agreements, facilities, and other education-related matters, but shall endeavor to keep teachers in place after the start of the school year and transfer teachers, if necessary, during summer break.

(b) The Mayor may delegate any of his authority to a designee as he or she determines is warranted for efficient and sound administration and to further the purpose of DCPS to educate all students enrolled within its schools or learning centers consistent with District-wide standards of academic achievement.

(c)(1) In accordance with Chapter 5 of Title 2, the Mayor shall promulgate rules and regulations governing DCPS, including rules governing the process by which the Mayor and DCPS will seek and utilize public comment in the development of policy.

(2) Proposed rules shall be submitted to the Council for a 45-day period of review. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

(June 12, 2007, D.C. Law 17-9, § 103, 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-171.

Delegation of Authority. — Delegation of the Mayor's Authority under the Public Education Reform Amendment Act of 2007 to chair Special Community Meeting Relating to Reorganization and Rightsizing Plan for the District of Columbia Public Schools, see Mayor's Order 2008-35, February 27, 2008 (55 DCR 5298).

Delegation of Authority—Director of the Department of Employment Services, see Mayor's Order 2009-115, June 19, 2009 (56 DCR 6864).

Delegation of Official to Chancellor of the District of Columbia Public Schools (DCPS) to execute a Ground Lease for the Scott Montgomery School, see Mayor's Order 2011-130, August 8, 2011 (58 DCR 7325).

Mayor's Orders. — Transfer of Property—District of Columbia Public Schools, see Mayor's Order 2008-104, July 29, 2008 (55 DCR 9386).

Transfer of the Hine Junior High School located at 302 8th Street, SE, Washington, D.C. from District of Columbia Public Schools to the Office of the Deputy Mayor for Planning and Economic, see Mayor's Order 2010-62, April 23, 2010 (57 DCR 3510).

Transfer of Webb Elementary School located at 1375 Mount Olivet Road, NE, Washington, D.C. from District of Columbia Public Schools to the Department of Real Estate Services, see Mayor's Order 2010-182, December 31, 2010 (57 DCR 12643).

§ 38-173. Budget requirements of the District of Columbia Public Schools.

(a) The Mayor shall submit the budget for DCPS pursuant to § 1-204.42, along with a plan detailing the allocation of funds to each DCPS public school by program and activity level and comptroller source group.

(b) The Council may, following its review of the plan submitted pursuant to subsection (a) of this section, modify the funding and other resource levels, including full-time equivalent allocations, allocated by the plan to individual schools by a $\frac{2}{3}$ majority vote of the Council.

(c) For fiscal year 2009, the Council may reallocate funds on a program level, but shall not make adjustments to activity costs within a program level; provided, that this restriction shall not apply to Special Education State, or any other local or state special education category the Mayor may designate.

(d) Beginning with fiscal year 2010, for each program level, the Mayor shall submit:

- (1) Actual expenditures for the prior school year;
- (2) Estimated expenditures for the current school year; and
- (3) Projected expenditures for the following school year.

(June 12, 2007, D.C. Law 17-9, § 104, 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-171.

§ 38-174. Chancellor; appointment; duties.

(a) The DCPS shall be administered by a Chancellor, who shall be appointed

pursuant to § 1-523.01(a), and in accordance with subsection (b) of this section. The Chancellor shall:

- (1) Be the chief executive officer of DCPS;
- (2) Be qualified by experience and training for the position; and
- (3) Serve at the pleasure of the Mayor.

(b)(1) Prior to the selection of a nominee for Chancellor, the Mayor shall:

(A) Establish a review panel of teachers, including representatives of the Washington Teachers Union, parents, and students ("panel") to aid the Mayor in his or her selection of Chancellor;

(B) Provide the resumes and other pertinent information pertaining to the individuals under consideration, if any, to the panel; and

(C) Convene a meeting of the panel to hear the opinions and recommendations of the panel.

(2) The Mayor shall consider the opinions and recommendations of the panel in making his or her nomination and shall give great weight to any recommendation of the Washington Teachers Union.

(c) The duties of the Chancellor shall include to:

- (1) Organize the agency for efficient operation;
- (2) Create offices within the agency, as necessary;

(3) Exercise the powers necessary and appropriate to operate the schools and school system and to implement applicable provisions of District and federal law;

(4) Communicate with the collective bargaining unit for the employees under his or her administration;

(5) Promulgate and implement rules and regulations necessary and appropriate to accomplish his or her duties and functions in accordance with § 38-172 and Chapter 5 of Title 2; [§ 2-501 et seq.];

(6) Obtain parental input as required by the No Child Left Behind Act of 2001, approved January 8, 2002 (Pub. L. No. 107-110; 115 Stat. 1425), and in accordance with the rules promulgated pursuant to this chapter;

(7) Hold public meetings, at least quarterly;

(8) Exercise, to the extent that such authority is delegated by the Mayor,:

(A) Personnel authority; and

(B) Procurement authority independent of the Office of Contracting and Procurement, consistent with Unit A of Chapter 3 of Title 2 [§ 2-301.01 et seq.];

(9) Maintain clean and safe school facilities; and

(10) Create and operate a District-wide database that records the condition of all school facilities under the control of DCPS, which database shall be updated as necessary, but at least once per calendar year.

(June 12, 2007, D.C. Law 17-9, § 105, 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-171.

Delegation of Authority. — Delegation of Authority—Chancellor, District of Columbia Public Schools, see Mayor's Order 2007-158, July 5, 2007 (54 DCR 9617).

Revised Delegation of Authority to Chancellor, District of Columbia Public Schools, see Mayor's Order 2007-11622, August 10, 2007

§ 38-175. Transfers; continuation.

(a) All functions, authority, programs, positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Board of Education, as the local education agency, established pursuant to § 1-204.95 [repealed] for the purpose of providing educational services to residents of the District of Columbia are transferred to the Mayor.

(b) All rules, orders, obligations, determinations, grants, contracts, licenses, and agreements of the Board of Education and the District of Columbia Public Schools transferred to the Mayor under subsection (a) of this section shall continue in effect according to their terms until lawfully amended, repealed, or modified.

(June 12, 2007, D.C. Law 17-9, § 106, 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-171.

CHAPTER 1B. DEPARTMENT OF EDUCATION.

Sec.

38-191. Department of Education; establishment; authority.

38-192. Special education; reporting requirement.

Sec.

38-192.01. Adult literacy reporting.

38-193. Evaluation and re-authorization.

§ 38-191. Department of Education; establishment; authority.

(a) Pursuant to § 1-204.04(b), the Council establishes a Department of Education, subordinate to the Mayor. The department shall be headed by a Deputy Mayor for Education, who shall be appointed pursuant to § 1-523.01(a).

(b) The Department of Education shall:

(1) Have oversight of the:

(A) State Superintendent of Education Office;

(B) Office of Public Education Facilities Modernization; and

(C) Repealed.

(D) Development of a comprehensive, District-wide data system that integrates and tracks data across education, justice, and human service agencies.

(2) Be responsible for the planning, coordination, and supervision of all public education and education-related activities under its jurisdiction, including development and support of programs to improve the delivery of educational services and opportunities, from early childhood to the post-secondary education level, including the District of Columbia Public Schools, public charter schools, and the University of the District of Columbia; provided, that nothing in this chapter shall be interpreted to grant to the Mayor any authority over the University of the District of Columbia that is currently vested in the Board of Trustees of the University of the District of Columbia;

(3) Promote, coordinate, and oversee collaborative efforts among District government agencies to support education and child development as it relates to education, including coordinating the integration of programs and resources;

(4) Coordinate programs, policies, and objectives of the Mayor with the Board of Trustees of the University of the District of Columbia;

(5) Promote, coordinate, and oversee the enhancement and quality of workforce preparation programs within the State Superintendent of Education Office;

(6) Promote, coordinate, and oversee the enhancement and quality of adult literacy and adult education programs within the State Superintendent of Education Office;

(7) Submit to the Mayor, Chancellor, State Board of Education, and the Council the reports required by § 38-353(14) and (15); and

(8) Coordinate the development of the Master Facilities Plan.

(c) By December 31, 2009, the Deputy Mayor for Education shall submit to the to the Council for approval, by resolution, and to the State Board of

Education for review, a plan describing the framework that it shall use to develop a statewide, strategic education and youth development plan ("EYD plan").

(d) By September 30, 2010, the Deputy Mayor for Education shall submit to the Council for approval, by resolution, and to the State Board of Education for review, the EYD plan, which shall include:

(1) A clearly articulated vision statement for children and youth from zero to 24 years of age;

(2) Stated goals and operational priorities;

(3) An assessment of needs, including a showing that the comprehensive strategy to address the stated needs is based on research and data;

(4) A timeline and benchmarks for planning and implementation;

(5) An operational framework that provides for shared accountability, broad-based civic community involvement, and coordination:

(A) With District, school, and other community efforts;

(B) With key stakeholders throughout the community, including those in top public and civic leadership;

(C) Of the education sector with housing, health, and welfare;

(D) With economic development policies and plans; and

(E) Of multiple funding streams to ensure sustainability of the EYD plan;

(6) An explication of the location and planning, including intended use and design, for the District's educational facilities and campuses; and

(7) Recommendations for policy and legislative changes, if needed, to increase the effectiveness of the EYD plan.

(e) The Mayor shall review and update the EYD plan every 3 years and submit the plan to the Council for approval, by resolution, and to the State Board of Education for review.

(June 12, 2007, D.C. Law 17-9, § 202, 54 DCR 4102; Mar. 3, 2010, D.C. Law 18-111, § 4051(a), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 4123, 57 DCR 6242.)

Effect of amendments. — D.C. Law 18-111, in subsec. (b)(1)(B), inserted "and" at the end; repealed subsec. (b)(1)(C); in subsec. (b)(2), substituted "education level, including the District of Columbia Public Schools, public charter schools, and the University of the District of Columbia; provided," for "education level; provided,"; and added subsecs. (c), (d), and (e). Prior to repeal, subsec. (b)(1)(C) read as follows: "(C) Office of Ombudsman for Public Education; and".

D.C. Law 18-223, in subsec. (b), deleted "and" from the end of par. (6); substituted "; and" for a period at the end of par. (7), and added par. (8).

Emergency legislation. — For temporary (90 day) amendment of section, see § 4051(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of sec-

tion, see § 4051(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 4123 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 17-9. — Law 17-9, the "Public Education Reform Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-1, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on April 23, 2007, it was assigned Act No. 17-38 and transmitted to both Houses of Congress for its review. D.C. Law 17-9 became effective on June 12, 2007.

Legislative history of Law 18-111. — Law

18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Short title. — Short title: Section 4050 of D.C. Law 18-111 provided that subtitle F of title IV of the act may be cited as the “Department of Education Establishment Amendment Act of 2009”.

§ 38-192. Special education; reporting requirement.

Within 60 days of June 12, 2007, the Department of Education shall report to the Mayor and the Council on the status of:

(1) The Special Education Task Force, and the development of the Special Education Reform Plan, established pursuant to § 38-2551; and

(2) The implementation of the recommendations adopted by the Board of Education pursuant to the resolution Adopting the Recommendations of the Ad Hoc Committee on Special Education White Paper and Other Recommendations to Improve the Delivery of Special Education Services within the District of Columbia Public Schools, effective March 13, 2006 (Board of Education resolution SR06-22).

(June 12, 2007, D.C. Law 17-9, § 203, 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-191.

§ 38-192.01. Adult literacy reporting.

(a) The Office of the Deputy Mayor for Education shall report to the Mayor and the Council, on an annual basis on or before the start of the third quarter of fiscal years 2012 through 2016, on the capacity of District-funded service providers to meet the need and demand for adult literacy services in the District. The report shall:

(1) Cover the current and the preceding fiscal year;

(2) Identify the office’s metrics used for measuring the need and demand for adult literacy support, state the office’s quality standards, and measure the performance of District-funded providers of adult literacy services;

(3) Provide an accounting of the total number of adults needing literacy support in the District and by ward;

(4) Provide an accounting of the total number of District-funded providers of adult literacy support services that provide services to District residents, broken down by ward;

(5) Provide an accounting of the total number of openings available for literacy support services from District-funded service providers during the fiscal year reported, broken down by ward and by service provider;

(6) Provide a gap analysis that measures the capacity of District-funded service providers to meet the need and demand for adult literacy services in the District and by ward; and

(7) Propose an adult literacy plan for the next fiscal year to ensure that

District-funded programs are meeting the needs of adult learners District-wide and by ward.

(b) To prepare for the adult literacy report, the Office of the Deputy Mayor for Education, shall seek information and support for the development of quality standards and performance measures from community-based providers of adult education and family literacy services, adult learners, funders, District and federal agencies, representatives from the business community, and adult education experts.

§ 38-193. Evaluation and re-authorization.

(a)(1) By October 1 of each year, beginning in 2009, and every year thereafter, an evaluator shall be retained to conduct an independent evaluation of District of Columbia Public Schools ("DCPS") and of any affiliated education reform efforts. The evaluation shall be conducted according to the standard procedures of the evaluator, with full cooperation of the Council, Mayor, Chancellor, State Superintendent of Education, and other government personnel.

(2) The annual evaluation shall include an assessment of:

- (A) Business practices;
- (B) Human resources operations and human capital strategies;
- (C) All academic plans; and

(D) The annual progress made as measured against the benchmarks submitted the previous year, including a detailed description of student achievement.

(3) The initial evaluation shall incorporate benchmarks and analysis of the best available data to assess annual achievement.

(b) On September 30, 2014, the independent evaluator shall submit to the Council, the State Board of Education, and the Mayor a 5-year assessment of the public education system established by this act, which shall include:

(1) A comprehensive evaluation of public education following the passage of this act; and

(2) A determination as to whether sufficient progress in public education has been achieved to warrant continuation of the provisions and requirements of this act or whether a new law, and a new system of education, should be enacted by the District government.

(c)(1) The evaluations, and assessment, required by this section shall be conducted by the National Research Council of the National Academy of Sciences ("NRC") for the 5-year period described in this section.

(2) By December 31, 2009, prior to conducting the initial evaluation, NRC shall submit to the Council and the Mayor a compilation of data and an analysis plan, which shows:

(A) A description of the procedures and method to be used to conduct the evaluation;

(B) The opportunities for public involvement;

(C) The estimated release dates of interim and final evaluation reports; and

(D) A revised budget and funding plan for the evaluation.

(d) The Office of the Chief Financial Officer shall transfer by October 5, 2009, an amount of \$325,000 in local funds through an intra-District transfer from DCPS to the Office of the District of Columbia Auditor to contract with NRC to conduct the initial evaluation required by this section.

(June 12, 2007, D.C. Law 17-9, § 204, 54 DCR 4102; Mar. 3, 2010, D.C. Law 18-111, § 4051(b), 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 rewrote the section.

Emergency legislation. — For temporary (90 day) amendment of section, see § 4051(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 4051(b) of Fiscal Year Budget Support Congressional Review Emergency Amend-

ment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-191.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

References in text. — “This act”, referred to in subsec. (b) of this section, is D.C. Law 17-9.

CHAPTER 2. COMPULSORY SCHOOL ATTENDANCE AND EXPULSION.

Subchapter I. School Attendance

Sec.

38-201. Definitions.

38-202. Establishment of school attendance requirements.

38-203. Enforcement; penalties.

38-204. Census of minors.

38-205. Report of enrollments and withdrawals.

38-206. Penalty for failure to provide correct information.

38-207, 38-208. [Repealed].

38-209. Court jurisdiction.

Subchapter II. Expulsion of Students

Sec.

38-231. Expulsion of students who bring weapons into public schools.

38-232. Reference to criminal justice or juvenile delinquency system.

38-233. Alternative educational programs.

38-234. Definitions.

Subchapter III. Truancy and Dropout Prevention

38-251. Authority of police over truant child.

38-252. Truancy and Dropout Prevention Program.

Subchapter I. School Attendance.

§ 38-201. Definitions.

For the purposes of this subchapter, the term:

(1) "Board" means the District of Columbia Board of Education.

(2) "District" means the District of Columbia.

(3) "Minor" means a person who has not reached 18 years of age, pursuant to § 46-101.

(3A) "School-based student support team" means a team formed to support the individual student by developing and implementing action plans and strategies that are school-based or community-based, depending on the availability, to enhance the student's success with services, incentives, intervention strategies, and consequences for dealing with absenteeism.

(4) "School year" means the period from the opening of regular school programs, typically in September, until the closing of regular school programs, typically in June.

(Feb. 4, 1925, ch. 140, Art. I, § 1, as added Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376; Oct. 26, 2010, D.C. Law 18-242, § 3(a), 57 DCR 7555; June 7, 2012, D.C. Law 19-141, § 302(a), 59 DCR 3083.)

Cross references. — Annual census of children, see § 38-204 et seq.

Child labor and working permits, see § 32-201 et seq.

Section references. — This section is referred to in §§ 38-209 and 38-1800.02.

Prior Codifications. — 1981 Ed., § 31-401.

Effect of amendments. — D.C. Law 18-242, in par. (4), deleted "established by the Board," following "period".

D.C. Law 19-141 added par. (3A).

Temporary Amendment of Section. — For temporary (225 day) law authorizing the Superintendent of D.C. Public Schools to remove a student involved in a dangerous crime, see § 2 of Attendance and School Safety Tem-

porary Amendment Act of 2001 (D.C. Law 14-7, June 14, 2001, 48 DCR 3516).

Section 8(b) of D.C. Law 14-7 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) law authorizing the Superintendent of D.C. Public Schools to remove a student involved in a dangerous crime, see § 2 of Attendance and School Safety Emergency Amendment Act of 2001 (D.C. Act 14-24, March 28, 2001, 48 DCR 3315).

Legislative history of Law 8-247. — Law 8-247 was introduced in Council and assigned Bill No. 8-239, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on

December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-331 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-7. — Law 14-7, the “Attendance and School Safety Temporary Act of 2001”, was introduced in Council and assigned Bill No. 14-85, which was retained by Council. The Bill was adopted on first and second readings on February 6, 2001, and March 6, 2001, respectively. Signed by the Mayor on March 22, 2001, it was assigned Act No. 14-37 and transmitted to both Houses of Congress for its review. D.C. Law 14-7 became effective on June 13, 2001.

Legislative history of Law 18-242. — Law 18-242, the “Safe Children and Safe Neighborhoods Educational Neglect Mandatory Reporting Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-529, which

was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 15, 2010, and July 13, 2010, respectively. Signed by the Mayor on July 30, 2010, it was assigned Act No. 18-493 and transmitted to both Houses of Congress for its review. D.C. Law 18-242 became effective on October 26, 2010.

Legislative history of Law 19-141. — Law 19-141, the “South Capitol Street Memorial Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-211, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 6, 2012, and March 20, 2012, respectively. Signed by the Mayor on April 10, 2012, it was assigned Act No. 19-344 and transmitted to both Houses of Congress for its review. D.C. Law 19-141 became effective on June 7, 2012.

CASE NOTES

ANALYSIS

Damages.

Handicapped and special needs students.

Truancy.

Validity.

Damages.

The Compulsory School Attendance Laws and the regulations that implemented them did not create a private right of action for damages for negligent noncompliance with their directives. *Brantley v. District of Columbia*, 121 WLR 97 (Super. Ct. 1992).

Handicapped and special needs students.

Inadequacies of District of Columbia public school system, whether occasioned by insufficient funding or administrative inefficiency, could not be permitted to bear more heavily on the “exceptional” or handicapped child than on the normal child. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

If sufficient funds were not available to finance all of services and programs that were needed and desirable in public school system, then available funds must be expended equitably in such manner that no child was entirely excluded from publicly supported education consistent with his needs and ability to benefit therefrom. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Failure of Board of Education of District of Columbia to provide publicly supported education for “exceptional” children by including and

retaining them in public school system or otherwise providing them with publicly supported education and failure to afford them hearing and periodical review could not be excused by claim that there were insufficient funds. U.S. Const. Amend. 5; D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

No child eligible for publicly supported education in District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy or practice of Board of Education of District of Columbia or its agents unless child is provided adequate alternative educational services suited to child’s needs, which may include special education or tuition grants, and a constitutionally adequate prior hearing and periodic review of child’s status, progress, and adequacy of any educational alternative. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Board of Education of District of Columbia has obligation to provide whatever specialized instruction that will benefit child determined to have behavioral problems, to be mentally retarded, or to be emotionally disturbed or hyperactive. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

District of Columbia Board of Education by failing to provide children, who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, and the class they represented with publicly

supported specialized education violated controlling statutes and Board's own regulations. D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Conduct of District of Columbia Board of Education in denying children, who had been labeled as behavioral problems, mentally retarded, emotionally disturbed or hyperactive, and their class all publicly supported education while providing such education to other children violated due process clause. U.S. Const. Amend. 5; D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Due process of law required a hearing before children, who had been labeled behavioral problems, mentally retarded, emotionally disturbed or hyperactive, were suspended or expelled from regular schooling in public supported schools or reassigned for specialized instruction. U.S. Const. Amend. 5; D.C. Code §§ 31-101 et seq., 31-103, 31-201, 31-203, 31-207, 31-208. *Mills v. Board of Education*, 348 F. Supp. 866, 1972 U.S. Dist. LEXIS 12499 (1972).

Truancy.

The D.C. Code does not include an offense designated as "truancy" and does not otherwise make it an "offense" for a child to be absent from school, and the police have no direct statutory authority to lawfully stop and question juveniles in the District of Columbia solely on suspicion of possible truancy. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Because there is no truancy offense in the D.C. Code, the police cannot lawfully detain juveniles to determine if they are engaging in a "delinquent act" by being out of school. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Where police made a Terry stop based solely on "suspected truancy", they lacked a basis to reasonably suspect that the defendant was engaged in wrongdoing since an act of "truancy" by a juvenile is not unlawful in the District of Columbia. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Validity.

As applied to defendant, Compulsory School Attendance Act gave reasonable notice as to what conduct was proscribed for purposes of defendant's vagueness challenge; Act required defendant to place her child in regular attendance at school, and defendant did not place her child in regular attendance and proffered none of the enumerated valid excuses for failing to do so. D.C. Code 1981, § 31-402. *Brown v. District of Columbia*, 727 A.2d 865, 1999 D.C. App. LEXIS 78 (1999).

Fact that trial judge correctly construed Compulsory School Attendance Act to require "reasonable efforts" on the part of parent or guardian to place minor in regular attendance did not establish that the Act was vague. D.C. Code 1982, §§ 31-402, 31-403. *Brown v. District of Columbia*, 727 A.2d 865, 1999 D.C. App. LEXIS 78 (1999).

This is not unconstitutionally vague because a reasonable person exercising common sense would have no doubt as to the prohibitions contained therein. *District of Columbia v. Brown*, 124 WLR 1965 (Super. Ct. 1996).

§ 38-202. Establishment of school attendance requirements.

(a) Every parent, guardian, or other person, who resides permanently or temporarily in the District during any school year and who has custody or control of a minor who has reached the age of 5 years or will become 5 years of age on or before September 30th of the current school year shall place the minor in regular attendance in a public, independent, private, or parochial school, or in private instruction during the period of each year when the public schools of the District are in session. This obligation of the parent, guardian, or other person having custody extends until the minor reaches the age of 18 years. For the purpose of this section placement in summer school is not required.

(b) Any minor who has satisfactorily completed the senior high school course of study prescribed by the Board and has been granted a diploma that certifies his or her graduation from high school, or who holds a diploma or certificate of graduation from another course of study determined by the Board

to be at least equivalent to that required by the Board for graduation from the public senior high schools, shall be excused from further attendance at school.

(c) Any minor who has reached the age of 17 years may be allowed flexible school hours by the Superintendent of Schools provided he or she is actually, lawfully, gainfully, and regularly employed, but in no case shall he or she be excused entirely from regular attendance or excused to the extent that his or her timely graduation would be jeopardized or prevented.

(d) The Board shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to establish requirements to govern acceptable credit for studies completed at independent or private schools and private instruction, to govern the validity of applications for permission to be absent from school, to govern the selection and appointment of appropriate staff members to carry out the provisions of this chapter under the direction of the Superintendent of Schools, pursuant to Chapter 6 of Title 1, and in respect to other matters within the scope of authority of the Board that relates to this subchapter.

(Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, §§ 1, 2; renumbered as Art. II, § 1 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376; July 18, 2008, D.C. Law 17-202, § 604, 55 DCR 6297.)

Cross references. — Additional powers and duties of Superintendent, see § 38-105.

Belief that child is of compulsory school age, taking into custody, see § 16-2309.

Section references. — This section is referred to in §§ 38-203, 38-206, 38-209, 38-1800.02, and 16-2309.

Prior Codifications. — 1981 Ed., § 31-402. 1973 Ed., §§ 31-201, 31-202.

Effect of amendments. — D.C. Law 17-202, in subsec. (a), substituted "September 30th" for "December 31st".

Temporary Addition of Section. — Section 2 of D.C. Law 17-8 added provisions to read as follows:

"Sec. 1a. Establishment of standards for class exclusions and suspensions.

"(a) The Board of Education ("Board") shall adopt uniform disciplinary standards:

"(1) To determine when class exclusions will be the appropriate disciplinary measure for students;

"(2) To promote the education of students in the school, except for those students who may be a danger to the school's faculty, students, or others, where the student was placed prior to disciplinary action, and that prioritize consideration of the student's academic standing, the educational needs of the students, and the number of previous offenses.

"(b) The standards adopted under subsection (a) of this section shall include a progressive schedule of discipline which promotes the goal of in-class education for students subject to disciplinary action, beginning with in-class intervention strategies and ending with expulsion as the final and most extreme form of

discipline, and to the extent consistent with this progressive schedule, it shall be the policy of the District of Columbia to prefer in-school disciplinary action, except for those students who may be a danger to the school's faculty, students, or others.

"(c) The Board shall require a monthly report of disciplinary measures taken by each school regarding class exclusions and suspensions, including the rationale for the particular choice of discipline.

"(d) The Mayor shall provide for comprehensive inter-agency collaborative support programs, such as programs offered by the Department of Mental Health, the Department of Human Services, the Child and Family Services Agency, and the Department of Parks and Recreation, to assist the student subject to class exclusion at the school, except for those students who may be a danger to the school's faculty, students, or others, where the student was placed prior to the disciplinary action.

"(e) The Mayor shall make resources available to support the programs in subsection (d) of this section within the context of appropriated funds within the budget and financial plan."

Section 4(b) of D.C. Law 17-8 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2 of Class Exclusion Standards Emergency Amendment Act of 2007 (D.C. Act 17-23, March

Legislative history of Law 8-247. — For legislative history of D.C. Law 8-247, see Historical and Statutory Notes following § 38-201.

Legislative history of Law 17-202. — Law 17-202 the “Pre-K Enhancement and Expansion Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-537 which was referred to the Committee of the Whole. The Bill was adopted on first and second read-

ings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 23, 2008, it was assigned Act No. 17-399 and transmitted to both Houses of Congress for its review. D.C. Law 17-202 became effective on July 18, 2008.

CASE NOTES

Validity.

This chapter, (now this subchapter) is not unconstitutionally vague because a reasonable person exercising common sense would have no

doubt as to the prohibitions contained therein. *District of Columbia v. Brown*, 124 WLR 1965 (Super. Ct. 1996).

§ 38-203. Enforcement; penalties.

(a) An accurate daily record of the attendance of all minors covered by § 38-202 and this section shall be kept by the teachers of each public, independent, private, or parochial school and by every teacher who gives instruction privately. These records shall be open for inspection at all times by the Board, the Superintendent of Schools, school attendance officers, or other persons authorized to enforce this subchapter.

(b) It shall be the duty of each principal, head teacher, or school administrative officer as designated in each public, independent, private, or parochial school, and of each teacher who gives private instruction to report to the Board the school attendance of any minor covered by § 38-202(a) who is enrolled in a school or who is enrolled for private instruction and who is absent from school or instruction for more than 2 full-day sessions or 4 half-day sessions in any school month, along with a statement of the reasons for the absences.

(c) The absence of a minor covered by § 38-202(a) without valid excuse shall be unlawful.

(d) The parent, guardian, or other person who has custody or control of a minor covered by § 38-202(a) who is absent from school without a valid excuse shall be guilty of a misdemeanor.

(e) Any person convicted of failure to keep a minor in regular attendance in a public, independent, private, or parochial school, or failure to provide regular private instruction acceptable to the Board may be fined not less than \$100 or imprisoned for not more than 5 days, or both for each offense.

(f) Each unlawful absence of a minor for 2 full-day sessions or for 4 half-day sessions during a school month shall constitute a separate offense.

(g) For the 1st offense, upon payment of costs, the sentence may be suspended and the defendant may be placed on probation.

(h) For any person convicted under this section, the courts shall consider requiring the offender to perform community service as an alternative to fine or imprisonment or both.

(i) Within 60 days after the end of a school year, each public, independent, private, or parochial school shall report to the Mayor, or the Mayor’s designee, and make publicly available, the following data based on the preceding school year:

(A) The number of minors, categorized by grade, or equivalent grouping for ungraded schools, who had unexcused absences for:

- (i) One to 5 days;
- (ii) Six to 10 days;
- (iii) Eleven to 20 days; and
- (iv) Twenty-one or more days;

(A-i) The work of the school-based student support teams in reducing unexcused absences, including:

- (i) The number of students who were referred to a school-based student support team;
- (ii) The number of students who met with a school-based student support team;
- (iii) A summary of the action plans and strategies implemented by the school-based student support team to eliminate or ameliorate unexcused absences; and
- (iv) A summary of the services utilized by students to reduce unexcused absences;

(v) A summary of the common barriers to implementing the recommendations of the school-based student support team;

(B) The number of minors, categorized by grade, or equivalent grouping for ungraded schools, that the school reported to the Child and Family Services Agency pursuant to § 4-1321.02(a-1) and (a-2);

(B-i) The number of minors categorized by grade, or equivalent grouping for ungraded schools, that the school referred to the Court Social Services Division of the Family Court of the Superior Court of the District of Columbia for truancy; and

(C) The policy on absences, including defined categories of valid excuses, that it used.

(j) By August 1, 2012, the Mayor shall develop, through rulemaking, appropriate enforcement mechanisms to ensure that each school, principal, and teacher is in full compliance with the requirements of this subchapter and any regulations issued pursuant to this subchapter.

(Feb. 4, 1925, 43 Stat. 806, ch. 140, Art. I, §§ 5-7; renumbered as Art. II, § 2 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376; Oct. 26, 2010, D.C. Law 18-242, § 3(b), 57 DCR 7555; June 7, 2012, D.C. Law 19-141, § 302(b), 59 DCR 3083.)

Section references. — This section is referred to in §§ 38-206 and 38-209.

Prior Codifications. — 1981 Ed., § 31-403. 1973 Ed., §§ 31-205—31-207.

Effect of amendments. — D.C. Law 18-242 added subsec. (i).

D.C. Law 19-141 added subsecs. (i)(A-ii), (B-i), and (j).

Legislative history of Law 8-247. — For

legislative history of D.C. Law 8-247, see Historical and Statutory Notes following § 38-201.

Legislative history of Law 18-242. — For history of Law 18-242, see notes under § 38-201.

Legislative history of Law 19-141. — For history of Law 19-141, see notes under § 38-203.

CASE NOTES

ANALYSIS

Admissibility of evidence.

In general.

Practice and procedure.

Presumptions.

Review.

Search and seizure 3.

Validity.

Admissibility of evidence.

Although school form was admissible under business records exception to hearsay rule to prove number of days that child was absent, it was not admissible under exception to prove common residence of child and defendant for purposes of determining if defendant failed to have child attend school in violation of Compulsory School Attendance Act; although principal testified that child's teacher, who filled out form, had personal knowledge of child's absences, principal did not testify that teacher had personal knowledge of where child and defendant lived. D.C. Code 1981, § 31-402(a). *Clyburn v. District of Columbia*, 741 A.2d 395, 1999 D.C. App. LEXIS 262 (1999).

In general.

A child is neglected within the meaning of § 16-2301(9)(B) where he had attended less than 30 days of school between ages 8 and 14, as the failure of the custodial parent to ensure regular school attendance amounted to a lack of proper parental care. In re *LeShawn R.*, 114 WLR 1109 (Super. Ct. 1986).

Practice and procedure.

Fact that trial judge correctly construed Compulsory School Attendance Act to require "reasonable efforts" on the part of parent or guardian to place minor in regular attendance did not establish that the Act was vague. D.C. Code 1982, §§ 31-402, 31-403. *Brown v. District of Columbia*, 727 A.2d 865, 1999 D.C. App. LEXIS 78 (1999).

Trial court's denial of defendant's request for court-appointed expert to examine her child, who was absent for most of the school year, and testify regarding child's school phobia constituted error in prosecution of mother for violating Compulsory School Attendance Act; issue of whether child suffered from school phobia was relevant to the defense. D.C. Code 1981, §§ 11-2605(a), 31-402. *Brown v. District of Columbia*, 727 A.2d 865, 1999 D.C. App. LEXIS 78 (1999).

On remand, if, as result of psychologist's examination of child, defense counsel would be in position to present evidence establishing defense to the charge that defendant violated Compulsory School Attendance Act, then court should, upon request of defendant, reopen record and conduct further proceedings; however,

if result of exam does not put defense counsel in such position, court's denial of authorization to engage services of psychologist will have been shown to be harmless error. D.C. Code 1981, § 11-2605(a), 31-402. *Brown v. District of Columbia*, 727 A.2d 865, 1999 D.C. App. LEXIS 78 (1999).

Presumptions.

Defendant's statement to principal that she was child's mother, child's statement that her mother kept her out of school, and school form listing their common address, if properly before court, could give rise to reasonable inference that defendant had "custody or control" of child for purposes of determining if defendant failed to have child regularly attend school in violation of Compulsory School Attendance Act. D.C. Code 1981, § 31-402(a). *Clyburn v. District of Columbia*, 741 A.2d 395, 1999 D.C. App. LEXIS 262 (1999).

Subsection (d) of this section allows for a permissive inference or presumption whereby the court may find that the defendant is guilty if the government proves beyond a reasonable doubt that the defendant had control or custody of her child and that the child was absent from school; this presumption is valid because the court could rationally infer that a child's school absences arose out of the parent's control or custody of her. *District of Columbia v. Brown*, 124 WLR 1965 (Super. Ct. 1996).

Review.

On remand, if, as result of psychologist's examination of child, defense counsel would be in position to present evidence establishing defense to the charge that defendant violated Compulsory School Attendance Act, then court should, upon request of defendant, reopen record and conduct further proceedings; however, if result of exam does not put defense counsel in such position, court's denial of authorization to engage services of psychologist will have been shown to be harmless error. D.C. Code 1981, § 11-2605(a), 31-402. *Brown v. District of Columbia*, 727 A.2d 865, 1999 D.C. App. LEXIS 78 (1999).

Search and seizure 3.

Because there is no truancy offense in the D.C. Code, the police cannot lawfully detain juveniles to determine if they are engaging in a "delinquent act" by being out of school. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Where police made a Terry stop based solely on "suspected truancy", they lacked a basis to reasonably suspect that the defendant was engaged in wrongdoing since an act of "truancy" by a juvenile is not unlawful in the District of

Columbia. *United States v. Simpson*, 119 WLR 1229 (Super. Ct. 1991).

Validity.

Fact that trial judge correctly construed Compulsory School Attendance Act to require "reasonable efforts" on the part of parent or guardian to place minor in regular attendance did not establish that the Act was vague. *D.C. Code* 1982, §§ 31-402, 31-403. *Brown v. District of Columbia*, 727 A.2d 865, 1999 D.C. App. LEXIS 78 (1999).

As applied to defendant, Compulsory School Attendance Act gave reasonable notice as to what conduct was proscribed for purposes of defendant's vagueness challenge; Act required defendant to place her child in regular attendance at school, and defendant did not place her child in regular attendance and proffered none of the enumerated valid excuses for failing to do so. *D.C. Code* 1981, § 31-402. *Brown v. District of Columbia*, 727 A.2d 865, 1999 D.C. App. LEXIS 78 (1999).

§ 38-204. Census of minors.

The Board, or its designee, shall conduct annually, or as frequently as may be found necessary or desirable, a complete census of all minors 3 years of age or more who permanently or temporarily reside in the District. The census record shall be amended from day to day as changes of residence occur among minors within the age group, as other persons come within or leave the age group, and as other persons within the age group become residents of or leave the District. The census record of minors shall give the full name, address, sex, and date of birth of each minor, the school attended by him or her and, if the minor is not at school, the name and address of his or her employer, if any, and the name, address, telephone numbers, if any, and occupation of each parent or guardian.

(Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 1; renumbered as Art. II, § 3 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376.)

Cross references. — Census duties of public charter schools, see § 38-1802.04.

Duties and responsibilities of charter schools under this section, see § 38-1702.05.

Section references. — This section is referred to in §§ 33-206, 38-209, 38-1702.05, 38-1802.04, and 38-2901.

Prior Codifications. — 1981 Ed., § 31-404. 1973 Ed., § 31-208.

Legislative history of Law 8-247. — For legislative history of D.C. Law 8-247, see Historical and Statutory Notes following § 38-201.

§ 38-205. Report of enrollments and withdrawals.

The principal or head teacher of each public, independent, private, or parochial school, and each teacher who gives private instruction, shall, in accordance with the rules adopted by the Board pursuant to subchapter I of Chapter 5 of Title 2, report to the Board the name, address, sex, and date of birth of each minor who resides permanently or temporarily in the District who transfers between schools or who enrolls in or withdraws from his or her school.

(Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 2; renumbered as Art. II, § 4 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376.)

Section references. — This section is referred to in §§ 38-206 and 38-209.

Prior Codifications. — 1981 Ed., § 31-405. 1973 Ed., § 31-209.

Legislative history of Law 8-247. — For legislative history of D.C. Law 8-247, see Historical and Statutory Notes following § 38-201.

§ 38-206. Penalty for failure to provide correct information.

Any parent, guardian, custodian, principal, or teacher of a minor who has reached the age of 3 years who willfully neglects or refuses to provide the information required by §§ 38-202 through 38-206, or who knowingly makes any false statement, shall be guilty of a misdemeanor.

(Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. II, § 3; renumbered as Art. II, § 5 and amended, Mar. 8, 1991, D.C. Law 8-247, § 2(a), 38 DCR 376.)

Section references. — This section is referred to in § 38-209.

Prior Codifications. — 1981 Ed., § 31-406. 1973 Ed., § 31-210.

Legislative history of Law 8-247. — For legislative history of D.C. Law 8-247, see Historical and Statutory Notes following § 38-201.

§ 38-207. Department of School Attendance and Work Permits — Creation. [Repealed].

Repealed.

(Feb. 4, 1925, 43 Stat. 807, ch. 140, Art. III, § 1; Mar. 8, 1991, D.C. Law 8-247, § 2(b), 38 DCR 376.)

Prior Codifications. — 1981 Ed., § 31-411. 1973 Ed., § 31-211.

Legislative history of Law 8-247. — For

legislative history of D.C. Law 8-247, see Historical and Statutory Notes following § 38-201.

§ 38-208. Same — Director; appointments. [Repealed].

Repealed.

(Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 2; July 21, 1945, 59 Stat. 500, ch. 321, title V, § 21; Mar. 8, 1991, D.C. Law 8-247, § 2(b), 38 DCR 376.)

Prior Codifications. — 1981 Ed., § 31-412. 1973 Ed., § 31-212.

Legislative history of Law 8-247. — For

legislative history of D.C. Law 8-247, see Historical and Statutory Notes following § 38-201.

§ 38-209. Court jurisdiction.

The Family Division of the Superior Court is hereby given jurisdiction in all cases arising under this subchapter.

(Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 3; May 29, 1928, 45 Stat. 1006, ch. 908, § 26; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(g).)

Prior Codifications. — 1981 Ed., § 31-413.

1973 Ed., § 31-213.

*Subchapter II. Expulsion of Students.***§ 38-231. Expulsion of students who bring weapons into public schools.**

Absent extenuating circumstances, as determined on a case-by-case basis by the Superintendent of Schools, and consistent with the Individuals With Disabilities Education Act, approved October 30, 1990 (104 Stat. 1141; 20 U.S.C. 1400 et seq.), any student who brings a weapon into a District of Columbia Public School shall be expelled for not less than one year.

(Apr. 9, 1997, D.C. Law 11-174, § 2(a), 43 DCR 4500.)

Prior Codifications. — 1981 Ed., § 31-451.

Temporary Addition of Section. — Section 2 of D.C. Law 11-173 enacted §§ 31-451 through 31-454, comprising subchapter II of Chapter 4 of Title 31 1981 Ed.

Section 4(b) of D.C. Law 11-173 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary addition of subchapter, see § 2(a)-(d) of the Expulsion of Students Who Bring Weapons into Public Schools Emergency Act of 1996 (D.C. Act 11-289, July 1, 1996, 43 DCR 3711), § 2(a)-(d) of the Expulsion of Students Who Bring Weapons into Public Schools Congressional Review Emergency Act of 1996 (D.C. Act 11-398, October 9, 1996, 43 DCR 5692), § 2(a)-(d) of the Expulsion of Student Who Bring Weapons Into Public Schools Second Congressional Review Emergency Act of 1996 (D.C. Act 11-467, December 30, 1996, 44 DCR 172), and § 2(a)-(d) of the Expulsion of Students Who Bring Weapons Into Public Schools Congressional Review Emergency Act of 1997 (D.C. Act 12-22, March 3, 1997, 44 DCR 1770).

For temporary (90-day) authorization for payment of attorney fees, see § 2703 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) authorization for comprehensive special education transporta-

tion plans, see § 2732 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) authorization for payment of attorney fees, see §§ 2(c) and 3(c) of the Fiscal Year 2001 Budget Support Second Emergency Amendment Act of 2000 (D.C. Act 13-393, August 14, 2000, 47 DCR 7032).

Legislative history of Law 11-173. — Law 11-173, the “Expulsion of Students Who Bring Weapons Into Public Schools Temporary Act of 1996,” was introduced in Council and assigned Bill No. 11-539, which was retained by the Council. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-322 and transmitted to both Houses of Congress for its review. D.C. Law 11-173 became effective on April 9, 1997.

Legislative history of Law 11-174. — Law 11-174, the “Expulsion of Students Who Bring Weapons Into Public Schools Act of 1996,” was introduced in Council and assigned Bill No. 11-540, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-323 and transmitted to both Houses of Congress for its review. D.C. Law 11-174 became effective on April 9, 1997.

§ 38-232. Reference to criminal justice or juvenile delinquency system.

Pursuant to the Gun-Free Schools Act of 1994, approved October 20, 1994 (108 Stat. 3908; 20 U.S.C. 8921 et seq.) [repealed, see now 20 U.S.C. § 7151] the Superintendent of Schools shall refer to the criminal justice or juvenile delinquency system, simultaneous with expulsion, any student who is expelled for bringing a weapon into a District of Columbia Public School.

(Apr. 9, 1997, D.C. Law 11-174, § 2(b), 43 DCR 4500.)

Prior Codifications. — 1981 Ed., § 31-452.
Temporary Addition of Section. — See Historical and Statutory Notes following § 38-231.

Emergency legislation. — For temporary addition of subchapter, see note to § 38-231.

Legislative history of Law 11-173. — For legislative history of D.C. Law 11-173, see Historical and Statutory Notes following § 38-231.

Legislative history of Law 11-174. — For legislative history of D.C. Law 11-174, see Historical and Statutory Notes following § 38-231.

§ 38-233. Alternative educational programs.

The Board of Education shall provide to any student who is expelled from school in accordance with this subchapter an alternative educational program at the D.C. Street Academy, at another existing alternative educational program, or at any alternative educational program that may be established in the future. Not later than 90 days after the effective date of this subchapter:

(1) The Mayor and the Board of Education shall submit a report to the Council delineating a comprehensive plan for providing alternative educational services to a student who has been expelled from a District of Columbia Public School setting.

(2) The comprehensive plan shall include a description of the alternative education services to be provided to an expelled student, each location where the alternative education services shall be provided, and the estimated annual cost of providing the alternative education services.

(Apr. 9, 1997, D.C. Law 11-174, § 2(c), 43 DCR 4500.)

Prior Codifications. — 1981 Ed., § 31-453.
Temporary Addition of Section. — See Historical and Statutory Notes following § 38-231.

Emergency legislation. — For temporary addition of subchapter, see note to § 38-231.

Legislative history of Law 11-173. — For legislative history of D.C. Law 11-173, see Historical and Statutory Notes following § 38-231.

Legislative history of Law 11-174. — For legislative history of D.C. Law 11-174, see Historical and Statutory Notes following § 38-231.

§ 38-234. Definitions.

(a) For the purposes of this subchapter, the term “weapon” means a firearm and includes:

(1) Any weapon, including a starter gun, which will or is designed to or may be readily converted to expel a projectile by the action of an explosive;

(2) The frame or receiver of any weapon described in this subsection;

(3) Any firearm muffler or firearm silencer; or

(4) Any destructive device; the term “destructive device” means:

(A) Any explosive, incendiary, or poison gas;

(B) Bomb;

(C) Grenade;

(D) Rocket having a propellant charge of more than 4 ounces;

(E) Missile having an explosive or incendiary charge of more than a ¼ ounce;

(F) Mine; or

(G) Any similar device.

(5) Any type of weapon which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than ½ an inch in diameter; and

(6) Any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraphs (e) and (f) of this paragraph and from which a destructive device may be readily assembled.

(b) The term “weapon” shall not include:

(1) An antique firearm;

(2) Any device which is neither designed nor redesigned for use as a weapon; or

(3) Any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device.

(Apr. 9, 1997, D.C. Law 11-174, § 2(d), 43 DCR 4500.)

Prior Codifications. — 1981 Ed., § 31-454.

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-231.

Emergency legislation. — For temporary addition of subchapter, see note to § 38-231.

Legislative history of Law 11-173. — For legislative history of D.C. Law 11-173, see Historical and Statutory Notes following § 38-231.

Legislative history of Law 11-174. — For legislative history of D.C. Law 11-174, see Historical and Statutory Notes following § 38-231.

Subchapter III. Truancy and Dropout Prevention.

§ 38-251. Authority of police over truant child.

(a)(1) The Office of the State Superintendent of Education, after consultation with the District of Columbia Public Schools, the Public Charter School Board, the Child and Family Services agency, and the Metropolitan Police Department, shall establish truancy centers in the District of Columbia for the delivery of truant public school and public charter school students by the Metropolitan Police Department.

(2) A law enforcement officer shall take to the nearest truancy center any child who the law enforcement officer has reasonable grounds to believe, based on the child's age and other factors, is truant from a public or public charter school on a day and during the hours when the public or public charter school is in session.

(3) The law enforcement officer shall take into custody any child who the law enforcement officer has reasonable grounds to believe is a truant from any independent, private, or parochial school on a day and during the hours when the independent, private, or parochial school is in session.

(b) On the request of a person who has reached the age of 18 years, graduated from high school, or received a general equivalency diploma, and who has previously been taken into custody pursuant to subsection (a) of this section, the Metropolitan Police Department shall seal all records relating to custody authorized by subsection (a) of this section.

(Feb. 4, 1925, ch. 140, Art. II, § 6, as added Aug. 25, 1994, D.C. Law 10-159, § 3, 41 DCR 4884; Oct. 20, 1999, D.C. Law 13-38, § 1906, 46 DCR 6373; Aug. 16, 2008, D.C. Law 17-219, § 4014, 55 DCR 7598.)

Prior Codifications. — 1981 Ed., § 31-402.1.

Effect of amendments. — D.C. Law 13-38 rewrote this section which formerly required a law enforcement officer to take a student or child into custody and deliver him to the appropriate school and also provided for sealing records pertaining thereto.

D.C. Law 17-219 rewrote subsecs. (a)(1) and (2).

Emergency legislation. — For temporary (90-day) amendment of section, see § 1906 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 10-159. — Law 10-159, the “Police Truancy Enforcement Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-248, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-275 and transmitted to both Houses of Congress for its review. D.C. Law 10-159 became effective on August 25, 1994.

Legislative history of Law 13-38. — Law 13-38, the “Service Improvement and Fiscal Year 2000 Budget Support Act of 1999,” was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008,” was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Short title. — Short title: Section 4013 of D.C. Law 17-219 provided that subtitle G of title IV of the act may be cited as the “Truancy Centers Amendment Act of 2008”.

§ 38-252. Truancy and Dropout Prevention Program.

(a) Subject to the availability of appropriations, the District of Columbia Board of Education, or its successor, and the District of Columbia Public Schools shall offer a Truancy and Dropout Prevention Program for students who are enrolled in the District of Columbia Public Schools system. The programs should be implemented on a full-time basis, work with local schools and parents, and provide resources that will help reduce absences and unexcused absences, and reduce dropout and increase retention rates.

(b) The program shall develop a supportive relationship with the Metropolitan Police Department.

(c) The program shall be available for students who are enrolled in grades K-12 and for students who are enrolled in ungraded classes in elementary, middle or junior high, and high schools.

(d) Notwithstanding any other law, nothing in this section shall be construed to create an entitlement to a truancy or dropout prevention program for any student.

(March 26, 1999, D.C. Law 12-175, § 1202, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 31-471. 1981 Ed., § 31-1861.

Emergency legislation. — For temporary addition of subchapter see § 802 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794).

For temporary (90-day) addition of section, see § 802 of the Fiscal Year 1999 Budget Sup-

port Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

Legislative history of Law 12-175. — Law 12-175, the “Fiscal Year 1999 Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5,

1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Short title. — District of Columbia Public

Schools Truancy and Dropout Prevention Program Act of 1998: Section 1201 of D.C. Law 12-175 provided that title XII of the act may be cited as the "District of Columbia Public Schools Truancy and Dropout Prevention Program Act of 1998."

CHAPTER 2A. PRE-KINDERGARTEN EDUCATION SYSTEM.

Subchapter I. Definitions; Administration; and Funding

Sec.

38-271.01. Definitions.

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38-272.01. Establishing high-quality standards.

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Sec.

38-273.01. Expansion to universal pre-k.

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Subchapter IV. Workforce Development

38-274.01. HEI program; DC Collaborative; workforce development plan; HEI scholarship program; career and compensation plan; programmatic and financial report.

38-274.01a. Transfer of authority, assets, and funds.

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38-274.03. Higher Education Incentive Grant Fund.

Subchapter V. Rulemaking

38-275.01. Rules.

Subchapter I. Definitions; Administration; and Funding.

§ 38-271.01. Definitions.

For the purposes of this chapter, the term:

(1) “Community-based organization” or “CBO” means a Head Start or early childhood education program operated by a nonprofit entity, faith-based organization, or other entity that participates in federally funded early childhood programs.

(1A) “Coordinating Council” means the State Early Childhood Development Coordinating Council established pursuant to § 38-271.07.

(1B) “DC Collaborative” means the collaborative of District of Columbia colleges and universities established pursuant to § 38-274.01(a)(3).

(1C) “Elementary and secondary education” means education from and including pre-k through the end of high school or their equivalent.

(2) Repealed.

(2A) “HEIG fund” means the Higher Education Incentive Grant Fund established by § 38-274.03.

(3) “HEI program” means the Higher Education Incentive grant program established pursuant to § 38-274.01.

(3A) “HEI scholarship program” means the scholarship program established pursuant to §§ 38-274.01 and 38-274.02.

(4) “HQ standards” means high-quality content standards and program requirements for pre-k programs established by the OSSE pursuant to § 38-272.01.

(5) “OSSE” means the Office of the State Superintendent of Education, established by Chapter 26 of this title [§ 38-2601 et seq.].

(6) “Pre-k” means the educational gradation available to children of

pre-kindergarten age for the 2 years prior to their eligibility for enrollment in kindergarten.

(7) “Pre-k age” means children 3 or 4 years of age, and children who become 5 years of age after September 30th of the upcoming school year.

(8) “Pre-k-education services” means the District-wide educational services provided to the publicly funded CBOs, District of Columbia Public Schools, and Public Charter Schools who provide pre-k care and education services to pre-k age children.

(9) “Pre-k program” means a classroom or a group of classrooms serving pre-k children. A single organization or entity may operate multiple pre-k programs in different locations.

(10) “Professional development” means a data-driven, continuous improvement process that provides a range of formal and informal experiences designed for teaching and administrative staff to increase their knowledge and understanding of research-based, developmentally appropriate content and teaching strategies.

(11) “School readiness” means a child’s mastery of approved early-learning standards in the domains of language and literacy, mathematical thinking, social and emotional development, scientific inquiry, social studies, approaches to learning, and health.

(12) “Technical assistance” means the human and technological resources that support the establishment of age-appropriate classroom environments, provide strategies that develop children’s early language and literacy development and mathematical thinking, aid in the mastery of early-learning standards, and develop appropriate instructional strategies for children with disabilities and for children whose first language is not English.

(13) “Workforce development” means a range of educational and training experiences that support and increase the capacity of individuals to enter and remain a part of the early-care and education-labor market.

(July 18, 2008, D.C. Law 17-202, § 101, 55 DCR 6297; Mar. 8, 2011, D.C. Law 18-285, § 2(a), 57 DCR 11005; Sept. 14, 2011, D.C. Law 19-21, § 9061(a), 58 DCR 6226.)

Effect of amendments. — D.C. Law 18-285 rewrote pars. (1) and (3); and added pars. (1A), (1B), (1C), (2A), and (3A).

D.C. Law 19-21 repealed par. (2), which formerly read:

“(2) ‘Fund’ means the Pre-k Program Assistance Grant Fund established by § 38-272.04.”

Temporary Amendment of Section. — Section 2(a) of D.C. Law 18-142 rewrote par. (1) to read as follows:

“(1) “Community-based organization” or “CBO” means a Head Start or early childhood education program operated by a nonprofit entity, faith-based organization, or organization that participates in federally funded or District-funded early childhood programs, including the child care subsidy program funded by the federal Child Care and Development Fund.”; in par. (3), substituted “pursuant to” for

“by”; and added pars. (2A) and (3A) to read as follows:

“(2A) “HEIG fund” means the Higher Education Incentive Grant Fund established by section 403.”.

“(3A) “HEI scholarship program” means the scholarship program established pursuant to sections 401 and 402.”.

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) amendment of section, see § 2(a) of Pre-k Acceleration and Clarification Congressional Review Emergency

Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) amendment of section, see § 2(a) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 17-202. — Law 17-202, the “Pre-K Enhancement and Expansion Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-537 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 23, 2008, it was assigned Act No. 17-399 and transmitted to both Houses of Congress for its review. D.C. Law 17-202 became effective on July 18, 2008.

Legislative history of Law 18-285. — Law 18-285, the “Pre-k Acceleration and Clarification Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-605, which was referred to the Committee of the Whole. The Bill was adopted on first and second read-

ings on July 13, 2010, and November 9, 2010, respectively. Enacted without signature of the Mayor on December 2, 2010, it was assigned Act No. 18-595 and transmitted to both Houses of Congress for its review. D.C. Law 18-285 became effective on March 8, 2011.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Editor’s notes. — Section 7101 of D.C. Law 17-219 repealed section 701 of D.C. Law 17-202.

Establishment—District of Columbia Early Childhood Advisory Council, see Mayor’s Order 2010-68, May 21, 2010 (57 DCR 4460).

§ 38-271.02. Administration of pre-k.

(a) The OSSE shall oversee CBO pre-k education services, including:

- (1) All programs, including curricula;
- (2) All related state and federal early childhood programs;
- (3) Any licensure requirements;
- (4) Fiscal matters;
- (5) Funding to:
 - (A) Maximize the use of federal funds and other resources;
 - (B) Minimize inefficiencies and programmatic barriers;
 - (C) Ensure that children are placed on the appropriate funding streams; and

(D) Ensure that funds authorized by this chapter are used to supplement, not supplant, other funding sources that finance education programs for children of pre-k age;

(6) The alignment and monitoring of standards and teaching practices between pre-k and grades kindergarten through 3rd grade; and

(7) The implementation of an external evaluation of all pre-k programs, including the measurement of progress toward school-readiness benchmarks.

(b) The OSSE shall:

(1) Coordinate with the Interagency Collaboration and Services Integration Commission, established by § 2-1594, to ensure that eligible families can access coordinated support services for their children of pre-k age;

(2) In regard to pre-k programs in public schools and public charter schools, consult with local education agencies and the Public Charter School Board, established by § 38-1802.14, to ensure that the goals of this chapter are met;

(3) Establish facilities requirements for classroom expansion and quality improvement, to be utilized by the Office of Public Education Facilities

Modernization, established by § 38-451 [repealed], to complete the capital improvements and renovation of facilities;

(4) Develop high-quality content standards for all pre-k programs, which have been approved by the State Board of Education;

(5) Develop and oversee a monitoring, assessment, and accountability process for all programs within the pre-k-education system;

(6) Promulgate a process for pre-k programs that fail to attain the required high-quality standards by September 1, 2014, which may include:

(A) A reduction or elimination of local funding;

(B) Denial of licensure; or

(C) Revocation of licensure;

(7) Promulgate a quality-improvement process for pre-k programs that, after 2014, fail to maintain for a period of time, as determined by OSSE, the required high-quality standards, which may include:

(A) Adherence to a quality-improvement plan;

(B) A reduction or an elimination of local funding;

(C) Denial of licensure; or

(D) Revocation of licensure;

(8) Develop and administer the technical assistance program across all pre-k education services.

(9) Collect and disseminate to the public on an ongoing basis child and program data; and

(10) Consider developing a sliding-fee scale for enrollment in pre-k of children whose family income is above 250% of the federal poverty guideline.

(July 18, 2008, D.C. Law 17-202, § 102, 55 DCR 6297; Mar. 8, 2011, D.C. Law 18-285, § 2(b), 57 DCR 11005.)

Effect of amendments. — D.C. Law 18-285, in subsec. (a), substituted “oversee CBO pre-k” for “oversee pre-k”; and rewrote subsecs. (b)(2) and (b)(8), which formerly read:

“(2) In regard to public charter schools, consult with the Public Charter School Board, established by § 38-1802.14, to ensure that the requirements and the goals of this chapter are met;”

“(8) Develop and administer the technical assistance and professional development programs for all teaching staff, principals, and other administrators in all of the sectors of pre-k, in coordination with the District’s state system of professional development and training;”

Temporary Amendment of Section. — Section 2(b) of D.C. Law 18-142 rewrote subsec. (b)(2) to read as follows:

“(2) In regard to pre-k programs in public schools and public charter schools, consult with local education agencies and the Public Charter School Board, established by section 2214 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C.

Official Code § 38-1802.14), to ensure that the goals of this act are met.”; and repealed subsec. (b)(8).

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) amendment of section, see § 2(b) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) amendment of section, see § 2(b) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

Legislative history of Law 18-285. — For history of Law 18-285, see notes under § 38-271.01.

§ 38-271.03. Annual evaluation of the quality of current pre-k programs.

(a) Within 30 days of July 18, 2008, the Mayor shall submit to the Council for its approval, a plan, including the name of a proposed independent evaluator, to evaluate pre-k programs in accordance with this section. Within 60 days of Council approval, the Mayor shall execute a contract with the approved evaluator.

(b) The approved evaluator shall perform a baseline quality assessment for a sampling of pre-k classrooms in each of the following sectors:

- (1) District of Columbia Public Schools;
- (2) Public charter schools; and
- (3) CBOs.

(c) The evaluator shall collect baseline quality data to:

- (1) Describe the overall program structure;
- (2) Assess the language and literacy environment; and
- (3) Assess the quality of instructional support, classroom climate, and classroom management.

(d) The evaluator's data and analysis shall be used to:

- (1) Provide an assessment of the level of quality of all sectors; and
- (2) Serve as baseline data from which to develop benchmarks for ongoing quality assessment of the pre-k-education system.

(e) The Mayor shall submit to the Council by September 15 of each year, beginning in 2009, projected benchmarks by which to measure annual achievements within the pre-k-education system.

(July 18, 2008, D.C. Law 17-202, § 103, 55 DCR 6297.)

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

§ 38-271.04. Annual capacity audit.

The Mayor shall submit to the Council by September 30 of each year, beginning in 2008, a capacity audit of pre-k programs for all sectors, to be used by OSSE to determine the:

- (1) Number of children for whom pre-k is not available and whose parents would send them to pre-k but for the lack of availability;
- (2) Current capacity of all existing pre-k programs; and
- (3) Manner in which Head Start programs are incorporated in the early care and education delivery system.

(July 18, 2008, D.C. Law 17-202, § 104, 55 DCR 6297.)

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

§ 38-271.05. Annual report to the Council.

(a) The Mayor shall submit to the Council by September 30 of each year,

beginning in 2009, an annual report on the status of pre-k for all sectors, accompanied, in 2009, by the independent quality evaluation required by § 38-271.03, which shall include OSSE's assessment of the:

(1) Annual achievements made as measured against the benchmarks developed the previous year;

(2) Number and success of the quality improvement plans implemented;

(3) Status of the monitoring, assessment, and accountability processes for all programs within the pre-k-education system; and

(4) Results of the current capacity audit of all pre-k programs.

(b) For the 2009 report, for which benchmarks would not have been submitted in the prior year, the annual achievements shall be measured using existing reliable data and that data shall be included, or an abstract thereof, in the evaluation.

(July 18, 2008, D.C. Law 17-202, § 105, 55 DCR 6297.)

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

Delegation of Authority. — Delegation of Authority pursuant to Section 501 of the Pre-k

Enhancement and Expansion Amendment Act of 2008, see Mayor's Order 2009-44, March 27, 2009 (56 DCR 6872).

§ 38-271.06. Funding.

(a) Local funding for pre-k programs shall not supplant any funding sources used prior to July 18, 2008, for education programs for children of pre-k age.

(b)(1) For each provider that meets the high-quality standards established pursuant to this chapter, local funding shall be allocated in such a manner so that each provider receives in total funding an amount equal to the per student funding formula, established pursuant to § 38-1804.01.

(2) Local funding for a program under a quality-improvement plan may vary, in accordance with procedures established pursuant to § 38-271.02(b)(7).

(c)(1) The OSSE shall establish procedures for the local allocation of funds distributed pursuant to this section in the event that the amount appropriated is insufficient to fund all providers that meet the high-quality standards established by this chapter.

(2) From amounts appropriated under this section, OSSE may provide for all activities authorized by this chapter.

(July 18, 2008, D.C. Law 17-202, § 106, 55 DCR 6297.)

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

§ 38-271.07. State Early Childhood Development Coordinating Council.

(a) Within 45 days of March 8, 2011, the Mayor shall establish and convene a State Early Childhood Development Coordinating Council ("Coordinating Council") to:

(1) Improve collaboration and coordination among entities carrying out

federally funded and District-funded pre-k and other early childhood programs to improve school readiness;

(2) Assist in the planning and development of a comprehensive early childhood education system that serves children ages birth to 8 years of age; and

(3) Comply with the Improving Head Start for School Readiness Act, approved December 12, 2007 (Pub. L. No. 110-134; 121 Stat. 1363).

(b) The Coordinating Council shall:

(1) Identify opportunities for collaboration and coordination among early childhood education entities;

(2) Review the annual pre-k report to the Council required by § 38-271.05 and submit any additional recommendations to improve the quality of and expand access to pre-k and other early childhood programs to the Council;

(3) Develop recommendations to:

(A) Increase participation of children in existing pre-k and other early childhood programs;

(B) Improve the quality of pre-k and other early childhood programs;

(C) Support the implementation of pre-k workforce development programs; and

(D) Improve state early-learning policies; and

(4) Perform other tasks as determined by the Mayor.

(c) The Coordinating Council membership shall consist of:

(1) The following members, or their designees:

(A) The Mayor;

(B) The Chairman of the Council of the District of Columbia;

(C) The State Superintendent of Education;

(D) The Chancellor of the District of Columbia Public Schools;

(E) The Executive Director of the Public Charter School Board;

(F) The Director of the Department of Health;

(G) The Director of the Department of Mental Health;

(H) The Director of the Department of Human Services;

(I) The Director of the Child and Family Services Agency;

(J) The State Director for Head Start Collaboration; and

(K) The Director of the entity designated as the state resource and referral agency; and

(2) The Mayor shall appoint at least one District resident from each of the following categories, to serve a term of 2 years:

(A) Families whose children are receiving or have received pre-k-education services;

(B) Head Start;

(C) Community-based organizations;

(D) Public schools;

(E) Public charter schools;

(F) Public charter school support organizations;

(G) Early childhood advocacy organizations;

(H) Business community;

(I) Philanthropic community;

(J) DC Collaborative; and

(K) Any additional category identified by the Coordinating Council as necessary or appropriate.

(d)(1) The Mayor shall appoint one person appointed pursuant to subsection (c)(2) of this section to be the chair, who shall convene the Coordinating Council no fewer than 4 times each year to gather public input on the Coordinating Council's recommendations.

(2) A quorum to transact business shall consist of 50% plus one of the members who are appointed and serving.

(July 18, 2008, D.C. Law 17-202, § 107, as added Mar. 8, 2011, D.C. Law 18-285, § 2(c), 57 DCR 11005.)

Temporary Addition of Section. — Section 2(c) of D.C. Law 18-142 added a section to read as follows:

"Sec. 107. State Early Child Development Coordinating Council; establishment.

"(a) Within 45 days of the effective date of the Pre-k Acceleration and Clarification Emergency Amendment Act of 2010, passed on emergency basis on January 5, 2010 (Enrolled version of Bill 8-603), the Mayor shall establish and convene a State Early Childhood Development Coordinating Council ("Coordinating Council") to:

"(1) Improve collaboration and coordination among entities carrying out federally funded and District-funded pre-k and other early childhood programs to improve school readiness;

"(2) Assist in the planning and development of a comprehensive early childhood education system that serves children ages birth to 8 years of age; and

"(3) Comply with the Head Start Act, approved December 12, 2007 (Pub. L. No. 110-134; 121 Stat. 1363).

"(b) The Coordinating Council shall:

"(1) Identify opportunities for collaboration and coordination among early childhood education entities;

"(2) Review the annual pre-k report to the Council required by section 105 and submit to the OSSE additional recommendations to improve the quality of and expand access to pre-k and other early childhood programs to be submitted to the Council along with the annual pre-k report;

"(3) Develop recommendations to:

"(A) Increase participation of children in existing pre-k and other early childhood programs;

"(B) Improve the quality of pre-k and other early childhood programs;

"(C) Support the implementation of pre-k workforce development programs; and

"(D) Improve state early learning policies; and

"(4) Perform other tasks as determined by the Mayor.

"(c) The Coordinating Council membership shall consist of:

"(1) The following members, or their designees, the:

"(A) Mayor;

"(B) Chairman of the Council of the District of Columbia

"(C) State Superintendent of Education;

"(D) Chancellor of the District of Columbia Public Schools;

"(E) Executive Director of the Public Charter School Board;

"(F) Director of the Department of Health;

"(G) Director of the Department of Mental Health;

"(H) Director of the Department of Human Services;

"(I) Director of the Child and Family Services Agency;

"(J) State Director for Head Start Collaboration; and

"(K) Director of the entity designated as the state resource and referral agency; and

"(2) The following members, who shall be appointed by the Chairman of the Council or the Mayor, with each appointing at least one District resident from each of the following categories, to serve a term of 2 years:

"(A) Families whose children are receiving or have received pre-k-education services;

"(B) Head Start;

"(C) Community-based organizations;

"(D) Public schools;

"(E) Public charter schools;

"(F) Public charter school support organizations;

"(G) Early childhood advocacy organizations;

"(H) Business community;

"(I) Philanthropic community;

"(J) DC Collaborative; and

"(K) Any additional category identified by the Coordinating Council as necessary or appropriate.

"(d)(1) Two people appointed pursuant to subsection (c)(2) of this section shall be appointed co-chairs, one by the Chairman and one

by the Mayor. The co-chairs shall convene the Coordinating Council no fewer than 4 times each year for the purpose of gathering public input on the Coordinating Council's recommendations.

"(2) A quorum to transact business shall consist of 50% plus one of the members who are appointed and serving."

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2(c) of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) addition, see § 2(c) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) addition of section, see § 2(c) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 18-285. — For history of Law 18-285, see notes under § 38-271.01.

Subchapter II. Enhancement of Existing Pre-K Programs.

§ 38-272.01. Establishing high-quality standards.

(a) The OSSE shall develop high-quality content standards and program requirements that pre-k programs that receive funds under this chapter are required to meet by September 1, 2014.

(b) The program requirements shall include:

(1) An adult-to-child ratio of one-to-8 for children 30 months to 3 years of age and of one-to-10 for children 4 years of age or older, or as otherwise approved by OSSE;

(2) A comprehensive curriculum that is aligned with the District of Columbia Early Learning Standards;

(3) Accreditation by a national accrediting body approved by OSSE;

(4) The minimum hours and days of operation;

(5) Valid and reliable assessments that meet accepted standards of technical adequacy to measure educational objectives and outcomes;

(6) Teacher qualifications, which may include a waiver of certain academic and degree requirements for current teachers, or current assistant teachers, with a minimum of 10 years of experience as of July 18, 2008, who are employed in programs meeting the educational objectives and outcomes of the HQ standards; provided, that by September 1, 2017, all teachers and assistant teachers shall be required to meet the academic and degree requirements as established by the OSSE and approved by the State Board of Education;

(7) A professional development and training plan for pre-k teachers and assistant teachers;

(8) A plan to foster parental support and involvement;

(9) A plan to coordinate support services;

(10) A plan to ensure inclusion of children with disabilities, in accordance with federally-stated goals;

(11) Facilities requirements;

(12) Licensure requirements; and

(13) A process for continuous improvement, classroom assessment, and child outcome assessment.

(July 18, 2008, D.C. Law 17-202, § 201, 55 DCR 6297; Mar. 8, 2011, D.C. Law 18-285, § 2(d), 57 DCR 11005.)

Effect of amendments. — D.C. Law 18-285 rewrote subsec. (a), which had read as follows: “(a) Within 120 days of July 18, 2008, OSSE shall establish high-quality content standards and program requirements, which have been approved by the State Board of Education, that all pre-k programs are required to meet by September 1, 2014.”

Temporary Amendment of Section. — Section 2(d) of D.C. Law 18-142 rewrote subsec. (a) to read as follows:

“(a) The OSSE shall develop high-quality content standards and program requirements that pre-k programs that receive funds under this act are required to meet by September 1, 2014.”

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(d) of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) addition of section, see § 4103 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 2(d) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) amendment of section, see § 2(d) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

Legislative history of Law 18-285. — For history of Law 18-285, see notes under § 38-271.01.

Short title. — Short title: Section 4101 of D.C. Law 18-223 provided that subtitle K of title IV of the act may be cited as the “Pre-K Expansion and Program Assistance and Workforce Development Act of 2010”.

Editor’s notes. — Section 4103 of D.C. Law 18-223 provided: “Sec. 4103. (a) The OSSE shall ensure that funds utilized to support pre-k community-based classrooms maximize the use of and supplement, not supplant, existing federal and local funding sources, such as Head Start and Child Care Subsidy, that finance education programs for children of pre-k age in the District of Columbia.

“(b) For each provider that meets the high-quality standards established pursuant to section 201 of the Pre-K Enhancement and Expansion Amendment Act of 2008, effective July 18, 2008 (D.C. Law 17-202; D.C. Official Code § 38-272.01), the OSSE shall ensure that local funding shall be allocated in such a manner that each provider receives in total funding per student funding an amount equal to the Uniform Per Student Funding Formula, established pursuant to section 2401 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321-107; D.C. Official Code § 38-1804.01).”

§ 38-272.02. Program audit requirement.

(a) By July 2009, each pre-k program in the District shall have completed an evaluation, by an independent evaluator, and a financial audit to determine its standing in relation to the required HQ standards.

(b) Within 30 days of July 18, 2008, the Mayor shall submit to the Council for its approval, a plan, including the name of a proposed independent evaluator, to evaluate pre-k programs in accordance with this section. Within 60 days of Council approval, the Mayor shall execute a contract with the approved evaluator.

(c) The Mayor shall submit to the Council by September 30, 2009, the results of the program and financial audits.

(July 18, 2008, D.C. Law 17-202, § 202, 55 DCR 6297.)

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

§ 38-272.03. Pre-k programs assistance grants.

(a) The OSSE shall establish and administer a grant program to assist existing and new pre-k programs in public schools, public charter schools, and CBOs in meeting the required HQ standards. Each grant shall be a 2-year grant.

(b) The OSSE shall establish the criteria for eligibility to receive a grant; provided, that, in evaluating grant applications, OSSE shall give priority to those applications that demonstrate need and a capacity to achieve and maintain the HQ standards.

(c) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue revised administrative and procedural rules for the grant program and HQ standards and submit the rules to the Council within 45 days of March 8, 2011. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

(July 18, 2008, D.C. Law 17-202, § 203, 55 DCR 6297; Mar. 8, 2011, D.C. Law 18-285, § 2(e), 57 DCR 11005.)

Effect of amendments. — D.C. Law 18-285 rewrote subsec. (a); and added subsec. (c). Prior to amendment, subsec. (a) read as follows: “(a) Beginning in September 2009, OSSE shall establish and administer a 5-year grant program to assist pre-k programs in meeting the required HQ standards. Each grant shall be a 2-year grant. The last grants to be awarded pursuant to this section shall be awarded in 2013.”

Temporary Amendment of Section. — Section 2(e) of D.C. Law 18-142 rewrote subsec. (a) to read as follows:

“(a) The OSSE shall establish and administer a grant program to assist existing and new pre-k programs in public schools, public charter schools, and CBOs in meeting the required HQ standards. Each grant shall be a 2-year grant.”; and added subsec. (c) is added to read as follows:

“(c) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue administrative and procedural rules for the grant program and HQ standards and submit the rules within 45 days of the effective date of the Pre-K Acceleration and Clarification Emer-

gency Amendment Act of 2010, passed on emergency basis on January 5, 2010 (Enrolled version of Bill 18-603). If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.”

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(e) of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) amendment of section, see § 2(e) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) amendment of section, see § 2(e) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

Legislative history of Law 18-285. — For history of Law 18-285, see notes under § 38-271.01.

§ 38-272.04. Pre-k Program Assistance Grant Fund; establishment. [Repealed].

Repealed.

(July 18, 2008, D.C. Law 17-202, § 204, 55 DCR 6297; Sept. 14, 2011, D.C. Law 19-21, § 9061(b), 58 DCR 6226.)

Legislative history of Law 17-202. — For history of Law 19-21, see notes under § 38-271.01.
Law 17-202, see notes following § 38-271.01.

Legislative history of Law 19-21. — For

Subchapter III. Expansion to Universal Pre-k.

§ 38-273.01. Expansion to universal pre-k.

(a) The OSSE shall conduct, by September 30th of each year, an evaluation of all pre-k programs to establish existing capacity.

(b) By September 2009, and every 5 years thereafter, the OSSE shall submit to the Mayor and the Council a 5-year strategic expansion plan, including an assessment of the number of children interested in attending pre-k and the District's fiscal and physical capacity to accommodate them.

(c) Beginning in September 2009, and each year thereafter, OSSE shall submit to the Mayor and the Council an implementation plan for the following school year to expand pre-k to the maximum extent possible, but shall expand pre-k each year to accommodate a minimum of 15% of the unserved children, based on the strategic expansion plan, until pre-k programs are available to all children of pre-k age whose parents choose to send them to pre-k.

(d)(1) During the expansion to universal pre-k, OSSE shall use its best efforts to:

(A) Ensure that over a 5-year period a minimum of 25% of all new pre-k programs are operated by CBOs; and

(B) Maintain a balance of diversity among the children.

(2) For the purpose of this subsection, "diversity" means a mix of children:

(A) From families of different income levels;

(B) With, and without, disabilities or special needs; and

(C) Whose first language is, and is not, English.

(e) A pre-k program established following July 18, 2008, shall comply with the HQ standards, established pursuant to, respectively, §§ 38-271.02(b)(4) and 38-272.01(b), upon the effective date of the HQ standards.

(July 18, 2008, D.C. Law 17-202, § 301, 55 DCR 6297.)

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

§ 38-273.02. Eligibility and priority for enrollment in pre-k.

(a) To be eligible for enrollment in pre-k, a child shall be a resident of the District and be of pre-k age, or become 3 years of age on or before September 30th of the program year.

(b) Except as provided in subsection (c) of this section, priority enrollment shall be first to children who live within the school's attendance zone boundary, as established pursuant to law and regulation, if applicable, and then to

children whose family income is between 130% and 250% of federal poverty guidelines, and to children whose family income is below 130% who are not served by existing programs.

(c) Enrollment for pre-k programs in District of Columbia Public Charter Schools shall be conducted according to the admission and enrollment provisions of § 38-1802.06.

(July 18, 2008, D.C. Law 17-202, § 302, 55 DCR 6297; Mar. 25, 2009, D.C. Law 17-353, § 306, 56 DCR 1117; Sept. 24, 2010, D.C. Law 18-223, § 4002, 57 DCR 6242.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the subsec. (b).

D.C. Law 18-223, in subsec. (b), substituted “Except as provided in subsection (c) of this section, priority enrollment” for “Priority enrollment”; and added subsec. (c).

Temporary Amendment of Section. — Section 2(f) of D.C. Law 18-142, in subsec. (b), substituted “then, if applicable, to children” for “then to children”.

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(f) of Pre-K Acceleration and Clarification Emer-

gency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) amendment of section, see § 4002 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Short title. — Short title: Section 4001 of D.C. Law 18-223 provided that subtitle A of title IV of the act may be cited as the “Pre-k Enrollment Amendment Act of 2010”.

Subchapter IV. Workforce Development.

§ 38-274.01. HEI program; DC Collaborative; workforce development plan; HEI scholarship program; career and compensation plan; programmatic and financial report.

(a) The University of the District of Columbia:

(1) Shall establish a Higher Education Incentive grant program for the purpose of increasing the number of pre-k teachers and assistant pre-k teachers working in elementary and secondary education in public schools, public charter schools, and CBOs who are meeting degree and credential requirements established by OSSE pursuant to § 38-272.01;

(2) As part of the HEI program:

(A) May award institutional grants to District of Columbia colleges and universities to increase the number of teachers with advanced learning credentials;

(B) May establish an initiative to increase the number of professionals who care for infants and toddlers younger than pre-k age who meet degree and credential requirements established by OSSE; and

(C) Shall administer any institutional grants awarded pursuant to this paragraph; and

(3) Shall establish and convene the DC Collaborative, a collaborative of

District of Columbia colleges and universities, to assist in developing the HEI program.

(b)(1) The University of the District of Columbia shall develop a pre-k workforce development plan, which shall include:

(A) A clearly articulated vision statement of how the DC Collaborative intends to attract and retain a highly-qualified pre-k workforce;

(B) Stated goals and strategies based upon a needs assessment of the current pre-k workforce in public schools, public charter schools, and CBOs and a review of higher education institutional capacity;

(C) The scope and structure of the HEI program and the HEI scholarship program; and

(D) A timeline and benchmarks for the planning and implementation of the HEI program and the HEI scholarship program.

(2) The University of the District of Columbia shall submit the pre-k workforce development plan to the Council for review by March 15, 2010.

(c) As the convener of the DC Collaborative, the University of the District of Columbia shall facilitate the development and implementation of the HEI program, including the distribution of funds to higher education institutions according to their capacity or need, and the HEI scholarship program.

(d) The University of the District of Columbia shall submit to the OSSE, a proposed career and compensation plan under which a teacher in the CBO sector will be compensated once the teacher meets the degree and credentials requirements established by the OSSE pursuant to § 38-272.01.

(e) The University of the District of Columbia shall submit an annual programmatic and financial report to the Mayor and to the Council on the status of the DC Collaborative and the Higher Education Incentive grant and scholarship programs.

(July 18, 2008, D.C. Law 17-202, § 401, 55 DCR 6297; Mar. 8, 2011, D.C. Law 18-285, § 2(f), 57 DCR 11005.)

Effect of amendments. — D.C. Law 18-285 rewrote the section, which formerly read:

“(a) The Higher Education Incentive grant program shall be established by OSSE for the purpose of increasing the number of pre-k teachers, and assistant teachers, with advanced learning credentials. The HEI program shall consist of a consortium of colleges in the District, including the Graduate School, United States Department of Agriculture, that offers continuing education classes for teachers and assistant teachers to obtain a Bachelors degree or an Associates degree.

“(b) The OSSE shall administer the HEI program and award HEI grants, subject to funding, to qualified teachers and assistant teachers.”

Temporary Amendment of Section. — Section 2(g) of D.C. Law 18-142 rewrote the section to read as follows:

“Sec. 401. DC Collaborative; HEI program; HEI scholarship program; career and compensation plan.

“(a) The University of the District of Columbia shall establish and convene a collaborative of District of Columbia colleges and universities (“DC Collaborative”) to craft the HEI program and HEI scholarship program, in collaboration with the Office of the State Superintendent of Education, for the purpose of increasing the number of teachers and assistant teachers in public schools, public charter schools, and CBOs who are meeting degree and credential requirements established by the OSSE pursuant to section 201.

“(b)(1) The DC Collaborative shall develop a pre-k workforce development plan, which shall include:

“(A) A clearly articulated vision statement of how the DC Collaborative intends to attract and retain a highly-qualified pre-k workforce;

“(B) Stated goals and strategies based upon a needs assessment of the current pre-k workforce in public schools, public charter schools, and CBOs and a review of higher education institutional capacity;

“(C) The scope and structure of the HEI program and the HEI scholarship program; and

“(D) A timeline and benchmarks for the planning and implementation of the HEI program and the HEI scholarship program.

“(2) The University of the District of Columbia shall submit the pre-k workforce development plan to the Council for review by March 15, 2010.

“(c) As the convener of the DC Collaborative, the University of the District of Columbia shall facilitate the development and implementation of the HEI program, including the distribution of funds to higher education institutions according to their capacity or need, and the HEI scholarship program.

“(d) The University of the District of Columbia shall submit to the OSSE, a proposed career and compensation plan under which a teacher

in the CBO sector will be compensated once the teacher meets the degree and credentials requirements established by the OSSE pursuant to section 201.”.

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(f) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

Legislative history of Law 18-285. — For history of Law 18-285, see notes under § 38-271.01.

§ 38-274.01a. Transfer of authority, assets, and funds.

(a) The authority to establish the HEI program and the HEI scholarship program is transferred from the OSSE to the University of the District of Columbia.

(b) By March 1, 2010, any real and personal property, positions, assets, and records relating to the HEI program or the HEI scholarship program, or to the planned establishment of the programs, shall become the property of the University of the District of Columbia, and any unexpended balances of appropriations, allocations, or other funds available or to be made available to the OSSE for the HEI program or the HEI scholarship program, or the planned establishment of the programs, shall be transferred to the HEIG fund.

(July 18, 2008, D.C. Law 17-202, § 401a, as added Mar. 8, 2011, D.C. Law 18-285, § 2(g), 57 DCR 11005.)

Temporary Addition of Section. — Section 2(h) of D.C. Law 18-142 added a section to read as follows: “Sec. 401a. Transfer of authority, assets, and funds.

“(a) The authority to establish the HEI program and the HEI scholarship program is transferred from the OSSE to the University of the District of Columbia.

“(b) Within 30 days of the effective date of the Pre-k Acceleration and Clarification Emergency Amendment Act of 2010, passed on emergency basis on January 5, 2010 (Enrolled version of Bill 18-603), any real and personal property, positions, assets, and records relating to the HEI program or the HEI scholarship program, or to the planned establishment of the programs, shall become the property of the University of the District of Columbia, and any unexpended balances of appropriations, allocations, or other funds available or to be made available to the OSSE for the HEI program or the HEI scholarship program, or the planned

establishment of the programs, shall be transferred to the HEIG fund.”.

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(g) of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) addition, see § 2(h) of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) addition, see § 2(g) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) amendment of section, see § 2(f) of Pre-k Acceleration and Clarification Congressional Review Emergency

Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) addition of section, see § 2(g) of Pre-k Acceleration and Clarification Congressional Review Emergency Amend-

ment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 18-285. — For history of Law 18-285, see notes under § 38-271.01.

§ 38-274.02. HEI scholarship program.

(a) In addition to awarding HEI grants, the University of the District of Columbia may establish and administer a scholarship-award program for qualified individuals who have an interest in the pre-k education field. In exchange for a commitment to teach in the pre-k-education system in the District for 3 years, the University of the District of Columbia may provide a scholarship to the HEI program, as well as a stipend, to a qualified applicant.

(b)(1) A qualified applicant shall be an individual who has graduated from college within 3 years of submission of the application.

(2) A preference shall be given to individuals who:

(A) Are domiciled in the District;

(B) Graduated from a District college or university; or

(C) Commit to be domiciled in the District within 180 days of accepting a scholarship.

(c) An individual who accepts the scholarship and fails to fulfill the 3-year commitment shall be required to repay the scholarship.

(July 18, 2008, D.C. Law 17-202, § 402, 55 DCR 6297; Mar. 8, 2011, D.C. Law 18-285, § 2(h), 57 DCR 11005.)

Effect of amendments. — D.C. Law 18-285, in subsec. (a), substituted “grants” for “grants to pre-k teachers and assistant teachers” and “the University of the District of Columbia” for “OSSE”.

Temporary Amendment of Section. — Section 2(i) of D.C. Law 18-142 deleted “to pre-k teachers and assistant teachers”; and substituted “the University of the District of Columbia” for “OSSE” both times it appears.

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(i) of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) amendment of section, see § 2(h) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) amendment of section, see § 2(h) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

Legislative history of Law 18-285. — For history of Law 18-285, see notes under § 38-271.01.

§ 38-274.03. Higher Education Incentive Grant Fund.

(a)(1) There is established as a nonlapsing fund the Higher Education Incentive Grant Fund, which shall be a separate program line within the University of the District of Columbia budget. All funds deposited into the HEIG fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in

subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(2) The HEIG fund shall be funded through:

- (A) Local funds;
- (B) Federal funds;
- (C) Federal grant funds; and
- (D) Grants, gifts, or subsidies from public or private sources.

(b) The funds in the HEIG fund shall be used:

- (1) To fund the HEI program and the HEI scholarship program;
- (2) For administrative costs and monitoring of the HEIG fund, not to exceed 10% of the fund balance per fiscal year; and
- (3) To develop the pre-k workforce development plan in accordance with § 38-274.01.

(July 18, 2008, D.C. Law 17-202, § 403, as added Mar. 8, 2011, D.C. Law 18-285, § 2(i), 57 DCR 11005.)

Temporary Addition of Section. — Section 2(j) of D.C. Law 18-142 added a section to read as follows:

“Sec 403. Higher Education Incentive Grant Fund; establishment.

“(a)(1) There is established as nonlapsing fund, the Higher Education Incentive Grant Fund (“HEIG fund”), which shall be a separate program line within the University of the District of Columbia budget. All funds deposited into the HEIG fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

“(2) The HEIG fund shall be funded through:

- “(A) Local funds;
- “(B) Federal funds;
- “(C) Federal grant funds; and

“(D) Grants, gifts, or subsidies from public or private sources.

“(b) The funds in the HEIG fund shall be used:

“(1) To fund the HEI program and the HEI scholarship program;

“(2) For administrative costs and monitoring of the HEIG fund, not to exceed 10% of the fund balance per fiscal year; and

“(3) To develop the pre-k workforce development plan in accordance with section 401.”.

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2(j) of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) addition of section, see § 2(i) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) addition of section, see § 2(i) of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 18-285. — For history of Law 18-285, see notes under § 38-271.01.

Subchapter V. Rulemaking.

§ 38-275.01. Rules.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If

the Council does not approve or disapprove the proposed rules, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

(b) All rules and regulations, issued under appropriate authority, prior to July 18, 2008, shall continue in full force and effect until superseded by the rules issued pursuant to subsection (a) of this section.

(July 18, 2008, D.C. Law 17-202, § 501, 55 DCR 6297.)

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-271.01.

CHAPTER 3. RESIDENCY REQUIREMENT AND NONRESIDENT TUITION.

Sec.	Sec.
38-301. Definitions.	38-310. Documentation to be submitted to establish status as other primary caregiver.
38-302. Tuition required of nonresidents; deposit of payments.	38-311. Authorities to establish procedures if unable to confirm residency and other primary caregiver status at the attending school.
38-303. Regulations determining tuition requirement; penalties; prosecutions.	38-312. False information; penalty.
38-304. Authority not affected by Reorganization Plan; delegation of functions; § 38-161 to remain in full force and effect.	38-312.01. False information hotline.
38-305. Teachers College tuition.	38-312.02. Student Residency Verification Fund.
38-306. Proof of residency.	38-312.03. Report on the status of residency fraud investigations, levying and collection of fines, and retroactive tuition.
38-307. Nonresident free tuition.	38-313. Rules.
38-308. Establishment of residency.	
38-309. Documentation to be submitted at the attending school in order to establish residency.	

§ 38-301. Definitions.

For the purposes of this chapter, the term:

- (1) "Adult" means a person who is 18 years of age, or older.
- (2) "Adult student" means a student who is at least 18 years old, or who has been emancipated from parental control by marriage, operation of statute, or the order of a court of competent jurisdiction.
- (3) "Appointed representative" means an individual acting on behalf of a person, pursuant to his or her written authorization, in presenting to school or chartering authority officials documentation to establish or verify the District residency of the person seeking to enroll the student.
- (4) "Chartering Authority" means a District entity authorized to grant charters for the establishment of charter schools, pursuant to either subchapter II of Chapter 18 of this title or Chapter 17 of this title.
- (5) "Child" means a person who is less than 18 years of age.
- (6) "Custodian" means a person to whom physical custody has been granted by a court of competent jurisdiction.
- (7) "District of Columbia public schools" or "DCPS" means the District of Columbia public school system, not including public charter schools.
- (8) "Guardian" means a person who has been appointed legal guardian of a student by a court of competent jurisdiction.
- (9) "Orphan" means a child who resides in the District of Columbia and who does not have a living parent or guardian.
- (10) "Other primary caregiver" means a person other than a parent or court appointed custodian or guardian who is the primary provider of care and support to a child who resides with him or her, and whose parent, custodian, or guardian is unable to supply such care and support and who submits evidence, pursuant to § 38-310 and procedures established pursuant to § 38-311, that he or she is the primary caregiver of the student.
- (11) "Parent" means a natural parent, stepparent, or parent by adoption who has custody or control of a student, including joint custody.

(12) "Public charter school" means a District school authorized by a chartering authority.

(13) "State Education Office" means the office established by Chapter 26 of this title.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 4; July 22, 1976, D.C. Law 1-75, § 5(f), 23 DCR 1183; Dec. 7, 2004, D.C. Law 15-205, § 4012(b), 51 DCR 8441.)

Prior Codifications. — 2001 Ed., § 38-304.
1981 Ed., § 31-604.
1973 Ed., § 31-309.

Effect of amendments. — D.C. Law 15-205 rewrote the section which had read:

"As used in this chapter:

"(1) The term 'child' means a person who is less than 18 years of age.

"(2) The term 'orphan' means a child who resides in the District of Columbia and who does not have a living parent or guardian.

"(3) The term 'adult' means a person who is 18 years of age, or older.

"(4) The term 'guardian' means a person:

"(A) Appointed as a guardian for a child by a court of competent jurisdiction; and

"(B) Who has control or custody of such child.

"(5) The term 'parent' means a person:

"(A) Who:

"(i) Is a natural parent of a child;

"(ii) Is a stepfather or stepmother of a child; or

"(iii) Has adopted a child; and

"(B) Who has custody or control of such child.

"(6) The term 'Board of Education' means the Board of Education of the District of Columbia."

Emergency legislation. — For temporary (90 day) amendment of section, see § 4012(b) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 4012(b) of Fiscal Year 2005 Budget

Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 1-75. — Law 1-75 was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-205. — Law 15-205, the "Fiscal Year 2005 Budget Support Act of 2004", was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Short title. — Short title of subtitle B of title IV of Law 15-205: Section 4011 of D.C. 15-205 provided that subtitle B of title IV of the act may be cited as the Truth in Student Residency in Public and Public Charter Schools Act of 2004.

Editor's notes. — Former § 38-301 has been recodified as § 38-161.

CASE NOTES

Parent.

Biology, in and of itself, is not determinative of an individual's status as a "parent" for purpose of Federal Employees Group Life Insurance Act; however, a court is to scrutinize the legal status of claimants in order to assess the merits of their claims. 5 U.S.C. § 8705(a). *Butler v. Metropolitan Life Ins. Co.*, 500 F. Supp. 661, 1980 U.S. Dist. LEXIS 16154 (1980).

Where biological father of individual who was insured pursuant to Federal Employees Group Life Insurance Act never married the mother and deserted her before the child was born and never contributed to child's support or acknowledged paternity in the judicial proceeding and never offered comfort or emotional

support to his son and first encounter with son occurred at son's initiation when he was 16 and subsequent encounters occurred very sporadically, the father was not a "parent" within meaning of the FEGLIA and was not entitled to share with mother in the policy benefits. 5 U.S.C. § 8705(a). *Butler v. Metropolitan Life Ins. Co.*, 500 F. Supp. 661, 1980 U.S. Dist. LEXIS 16154 (1980).

In the District of Columbia the biological father of an illegitimate child is not automatically treated as the legal "parent" for all purposes of the law. D.C. Code §§ 16-312, 19-316, 19-318, 31-309. *Butler v. Metropolitan Life Ins. Co.*, 500 F. Supp. 661, 1980 U.S. Dist. LEXIS 16154 (1980).

§ 38-302. Tuition required of nonresidents; deposit of payments.

(a) In the case of: (1) each adult who attends a public school of the District of Columbia and does not reside in the District of Columbia; and (2) each child who attends such a public school and does not have a parent, guardian, custodian, or other primary caregiver who resides in the District of Columbia, or is not an orphan; there shall be paid to the State Education Office the amount fixed by the State Education Office pursuant to subsection (b) of this section.

(b) The amount which shall be paid with respect to each person subject to subsection (a) of this section shall be fixed by the State Education Office as the amount necessary to cover all expenses incurred by the District of Columbia public schools or public charter schools that are a result of each person's use of a school's services, as determined by § 38-2602, and in accordance with Chapter 29 of this title. Following the final determination of the amounts, the State Education Office shall publish the tuition rate determinations in the District of Columbia Municipal Regulations.

(c) All amounts received by the State Education Office under this section shall be paid to the D.C. Treasurer under regulations established by the Mayor and accounted for in the General Fund as a separate revenue source allocable to provide authority for such school purposes as the State Education Office may approve. Any unexpended balance at the end of fiscal year 1981 or each succeeding year thereafter shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(d) Notwithstanding the provisions of subsection (a) of this section, upon the submission of evidence satisfactory to the State Education Office that care, custody, and substantial support are supplied by the person or persons with whom a child is residing in the District of Columbia, and that the parent or guardian of such child is unable to supply such care, custody, and support, or that such child is self-supporting, such child shall be considered a resident of the District of Columbia for the purpose of school attendance and exempt from the requirement to pay tuition.

(Sept. 8, 1960, 74 Stat. 853, Pub. L. 86-725, § 2; Aug. 22, 1980, D.C. Law 3-82, § 2(a), (b), 27 DCR 2647; Oct. 21, 2000, D.C. Law 13-176, § 8(a), 47 DCR 6835; Mar. 13, 2004, D.C. Law 15-105, § 92, 51 DCR 881; Dec. 7, 2004, D.C. Law 15-205, § 4012(a), 51 DCR 8441; Sept. 14, 2011, D.C. Law 19-21, § 9055, 58 DCR 6226.)

Cross references. — Uniform per student funding formula, applicability to nonresident students, see § 38-2902.

Section references. — This section is referred to in §§ 38-303, 38-304, 38-305, 38-306, and 38-

Prior Codifications. — 1981 Ed., § 31-602. 1973 Ed., § 31-307.

Effect of amendments. — D.C. Law 13-176 authorized substitution of State Education Of-

fice for Board of Education where appearing in this section.

D.C. Law 15-105, in subsecs. (b) and (c), substituted "State Education Office" for "Board" throughout.

D.C. Law 15-205, in subsec. (a), substituted "parent, guardian, custodian, or other primary caregiver" for "parent or guardian"; and re-wrote subsec. (b) which had read:

"(b) The amount which shall be paid with

respect to each person subject to subsection (a) of this section shall be fixed by the State Education Office as the amount necessary to cover the expense of tuition and cost of textbooks and school supplies used by such person; provided, that such amounts and changes in the amounts fixed by this subsection are set by the State Education Office in accordance with the provisions of § 2-505(a). Following the final adoption of such amounts, the State Education Office shall transmit a copy to the Mayor and a copy to the Council of the District of Columbia."

D.C. Law 19-21, in subsec. (c), substituted "revert to the unrestricted fund balance of the General Fund of the District of Columbia" for "be reserved as a restricted fund balance and used to provide authority to expend for subsequent years subject to the direction of the State Education Office; provided, that the base of the budget of the State Education Office shall be reduced by an amount equal to the estimated revenue from nonresident tuition for fiscal year 1981".

Emergency legislation. — For temporary amendment of section, see § 2 of the Waiver of Tuition for Non-Resident Minor Children of Deceased or Incapacitated Parents Emergency Amendment Act of 1994 (D.C. Act 10-237, April 28, 1994, 41 DCR 2606).

For temporary (90 day) amendment of section, see § 4012(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 4012(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 3-82. — Law 3-82 was introduced in Council and assigned Bill No. 3-3, which was referred to the Committee of the Whole. The Bill was adopted on first, amended first and second readings on April 22, 1980, May 6, 1980, and May 20, 1980, respectively. Signed by the Mayor on June 12, 1980, it was assigned Act No. 3-196 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-176. — Law 13-176, the "State Education Office Establishment Act of 2000," was introduced in Council and assigned Bill No. 13-416, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 6, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 26, 2000, it was assigned Act No. 13-187 and transmitted to both Houses of Congress for its review. D.C. Law 13-176 became effective on October 21, 2000.

Legislative history of Law 15-105. — Law 15-105, the "Technical Amendments Act of 2003", was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-301.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

CASE NOTES

ANALYSIS

Factual determination of residency.

Hearing.

In general.

Factual determination of residency.

District of Columbia was not required to fund disabled student's special education placement at private academy where student, who lived with nonresident mother who had physical custody, had never resided in the District of Columbia; fact that father had joint custody and was a District of Columbia resident did not render student eligible for special educational benefits. *Pestronk v. District of Columbia*, 150 F.Supp.2d 147, 2001 U.S. Dist. LEXIS 10449 (2001).

Hearing officer's findings of fact were deficient in proceeding to determine whether parent was liable for nonresident tuition for child enrolled in District of Columbia elementary

school, precluding appellate review, where hearing officer did not indicate in his report whether he credited or discredited parent's testimony that she lived in the District. D.C. Code 1981, §§ 1-1509(e), 31-602. *Braddock v. Smith*, 711 A.2d 835, 1998 D.C. App. LEXIS 100 (1998).

Consideration of evidence other than factors listed in board of education regulation on issue of whether parent of children enrolled in District schools was nonresident, so as to be liable for nonresident tuition, including Maryland car registration tags, ownership of Maryland home, receipt of mail at Maryland address, employer's personnel files, and neighbors' belief that parent lived at Maryland address, did not reflect unreasonable interpretation of either statutory or regulatory meaning of residency. D.C. Code 1981, § 31-602 et seq.; D.C.Mun.Reg. title 5, § 2002.11. *Robinson v. Smith*, 683 A.2d 481, 1996 D.C. App. LEXIS 212 (1996).

Finding that parent of children enrolled in District of Columbia schools was nonresident,

for purposes of liability for nonresident tuition, was supported by evidence in the record as a whole including parent's Maryland car registration tags, ownership of home in Maryland, receipt of mail at Maryland address, employer's personnel files, and neighbors' belief that parent lived at the Maryland address, despite evidence that parent had begun paying district taxes before the time at issue, that he had not registered car in District because wife would not release title to him, that he received bills at District address, and that he never registered to vote in Maryland. D.C. Code 1981, § 31-602 et seq.; D.C.Mun.Reg. title 5, § 2002.11. *Robinson v. Smith*, 683 A.2d 481, 1996 D.C. App. LEXIS 212 (1996).

Finding that parent of children enrolled in District of Columbia schools was Maryland resident and thus liable for nonresident tuition was supported by reliable, probative and substantial evidence despite consideration of neighbors' hearsay statements, reported by investigators, that parent lived in Maryland, where there was no claim that neighbors were biased against parent and their statements were corroborated by ample nonhearsay evidence and, though the District of Columbia Public Schools (DCPS) failed to call the neighbors as witnesses and investigators' oral testimony did not identify them by name, parent never asked about names, at least some of which were available in an investigator's written report. D.C. Code 1981, § 31-602. *Robinson v. Smith*, 683 A.2d 481, 1996 D.C. App. LEXIS 212 (1996).

Hearing.

There is no general bar to the use of hearsay evidence at hearing to determine whether par-

ent is resident of District of Columbia for purposes of paying tuition for child's attendance at District of Columbia school. D.C. Code 1981, §§ 1-1509(b), 31-602; D.C.Mun.Reg. title 5, § 2009.12(b). *Braddock v. Smith*, 711 A.2d 835, 1998 D.C. App. LEXIS 100 (1998).

New hearing was required on remand, in proceeding to determine whether parent was liable for nonresident tuition for child enrolled in District of Columbia elementary school, where District of Columbia Public Schools failed to apprise parent of her procedural rights in nonresident tuition hearing, including right to counsel; parent was prejudiced by this omission, since she did not hire counsel, which resulted in the admission of damaging hearsay evidence. D.C. Code 1981, § 31-602; D.C.Mun.Reg. title 5, § 2009. *Braddock v. Smith*, 711 A.2d 835, 1998 D.C. App. LEXIS 100 (1998).

In general.

Fair issues of fact as to whether pupil was bona fide resident of District of Columbia, whether his parents denied financial responsibility for his upkeep, including school tuition, whether his parents were financially able to support him and whether considerations supporting tuition requirements for nonresidents attending a state university and for nonresidents attending public elementary and high schools were the same precluded summary judgment in action by pupil and his next friend to recover tuition allegedly improperly exacted under allegedly unconstitutional District of Columbia Non-Resident Public School Tuition Act. D.C. Code § 31-307(a, d). *Truesdale v. District of Columbia*, 436 F.2d 288, 1970 U.S. App. LEXIS 6559 (C.A.D.C. 1970).

§ 38-303. Regulations determining tuition requirement; penalties; prosecutions.

(a) The State Education Office shall take such action as may be necessary to determine which of the persons, attending or desiring to attend the public schools of the District of Columbia, for whom tuition shall be paid as required by § 38-302, and said State Education Office is authorized to make regulations to carry out the intent and purposes of this chapter; provided, that such rules and all changes proposed to such rules are issued by the State Education Office in accordance with the provisions of § 2-505(a). Following the final adoption of such rules, the State Education Office shall transmit a copy to the Mayor and a copy to the Council of the District of Columbia.

(b) Any person who makes a statement required or authorized by this chapter to be filed with the State Education Office knowing that the information set forth in such statement is false shall be fined not more than \$300 or imprisoned for not more than 90 days, or both. Any person violating any regulation made pursuant to the authority in this chapter shall be fined not more than \$100 or imprisoned for not more than 30 days.

(c) All prosecutions for violations of this chapter, or regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. As used in this chapter the term "Corporation Counsel" means the attorney for the District of Columbia, by whatever title such attorney may be known, designated by the Mayor of the District of Columbia to perform the functions prescribed for the Corporation Counsel in this chapter.

(Sept. 8, 1960, 74 Stat. 853, Pub. L. 86-725, § 3; Aug. 22, 1980, D.C. Law 3-82, § 2(c), 27 DCR 2647; Oct. 21, 2000, D.C. Law 13-176, § 8(a), 47 DCR 6835; Mar. 13, 2004, D.C. Law 15-105, § 92, 51 DCR 881.)

Section references. — This section is referred to in §§ 38-304, 38-305, and 38-306.

Prior Codifications. — 1981 Ed., § 31-603. 1973 Ed., § 31-308.

Effect of amendments. — D.C. Law 15-105, in subsec. (a), substituted "State Education Office" for "Board" throughout.

Legislative history of Law 3-82. — For legislative history of D.C. Law 3-82, see Historical and Statutory Notes following § 38-302.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 38-302.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Hearing officer's findings of fact were deficient in proceeding to determine whether parent was liable for nonresident tuition for child enrolled in District of Columbia elementary school, precluding appellate review, where hearing officer did not indicate in his report whether he credited or discredited parent's testimony that she lived in the District. D.C. Code 1981, §§ 1-1509(e), 31-602. *Braddock v. Smith*, 711 A.2d 835, 1998 D.C. App. LEXIS 100 (1998).

New hearing was required on remand, in proceeding to determine whether parent was liable for nonresident tuition for child enrolled in District of Columbia elementary school, where District of Columbia Public Schools failed to apprise parent of her procedural rights

in nonresident tuition hearing, including right to counsel; parent was prejudiced by this omission, since she did not hire counsel, which resulted in the admission of damaging hearsay evidence. D.C. Code 1981, § 31-602; D.C.Mun.Reg. title 5, § 2009. *Braddock v. Smith*, 711 A.2d 835, 1998 D.C. App. LEXIS 100 (1998).

There is no general bar to the use of hearsay evidence at hearing to determine whether parent is resident of District of Columbia for purposes of paying tuition for child's attendance at District of Columbia school. D.C. Code 1981, §§ 1-1509(b), 31-602; D.C.Mun.Reg. title 5, § 2009.12(b). *Braddock v. Smith*, 711 A.2d 835, 1998 D.C. App. LEXIS 100 (1998).

§ 38-304. Authority not affected by Reorganization Plan; delegation of functions; § 38-161 to remain in full force and effect.

(a) Nothing in this chapter shall be construed so as to affect the authority vested in the Commissioners of the District of Columbia by Reorganization

Plan No. 5 of 1952 (66 Stat. 824). The performance of any function vested by this chapter in the Commissioners of the District of Columbia or in any office or agency under the jurisdiction and control of said Commissioners may be delegated by said Commissioners in accordance with § 3 of such Plan.

(b) This chapter shall not be construed as superseding § 38-161, and such section shall continue in full force and effect.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 5.)

Section references. — This section is referred to in §§ 38-303, 38-304, and 38-306.

1973 Ed., § 31-310.

Prior Codifications. — 2001 Ed., § 38-305. 1981 Ed., § 31-605.

Editor's notes. — Former § 38-304 has been recodified as § 38-301.

§ 38-305. Teachers College tuition.

Nothing contained in this chapter shall be construed as preventing the Board of Education from requiring students of the District of Columbia Teachers College to pay tuition, and the said Board is authorized, in its discretion, to require the payment of tuition by the students of such college, whether or not resident in the District of Columbia, with the exception of those students who are authorized to be excused from the payment of tuition by an act other than this chapter.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 7.)

Cross references. — Uniform per student funding formula, applicability to nonresident students, see § 38-2902.

Section references. — This section is referred to in §§ 38-303, 38-304, and 38-306.

Prior Codifications. — 2001 Ed., § 38-306.

1981 Ed., § 31-606.

1973 Ed., § 31-311.

Emergency legislation. — For temporary (90 day) addition, see § 4012(c) of Fiscal Year

2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Editor's notes. — Former § 38-305 has been recodified as § 38-304.

§ 38-306. Proof of residency.

All students enrolled in District of Columbia public schools and public charter schools funded by the District of Columbia or a student for whom educational services are paid by the District of Columbia shall provide proof of residency in the District or pay tuition pursuant to § 38-302. A determination of residency status shall be made annually for each such student. The methods used to determine residency status shall be consistent across District of Columbia public schools and public charter schools and shall be crafted to facilitate rather than hinder school enrollment of eligible students.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 9, as added Dec. 7, 2004, D.C. Law 15-205, § 4012(c), 51 DCR 8441; Aug. 16, 2008, D.C. Law 17-219, § 4012(a), 55 DCR 7598.)

Effect of amendments. — D.C. Law 17-219 rewrote the section, which had read as follows: “All students enrolled in District of Columbia public schools and public charter schools must provide proof of residency in the District or pay tuition pursuant to § 38-302. A determination of residency status shall be made annually for each student. The methods used to determine residency status shall be consistent across District of Columbia public schools and public charter schools and shall be crafted to facilitate rather than hinder school enrollment of eligible students.”

Emergency legislation. — For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-301.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Short title. — Short title: Section 4011 of D.C. Law 17-219 provided that subtitle F of title IV of the act may be cited as the “Residency Verification Amendment Act of 2008”.

Editor’s notes. — Former § 38-306 has been recodified as § 38-305.

§ 38-307. Nonresident free tuition.

A student entitled to enrollment without payment of nonresident tuition shall be either:

(1) A child who is otherwise eligible for admission to the DCPS or a public charter school, and who qualifies for free instruction under one of the following categories:

(A) A child who is in the care or control of a parent, custodian, or guardian who is a resident of the District;

(B) A child who is in the care or control of a District resident who is his or her other primary caregiver, as established pursuant to § 38-310;

(C) A child who is a resident of the District and does not have a living parent, custodian, guardian, or other primary caregiver in the United States;

(D) A child who is a ward of the District; or

(E) A child who is living with his or her spouse, when the spouse is at least 18 years old and is a resident of the District.

(2) An adult student who is otherwise eligible for admission to the DCPS or a public charter school and is a resident of the District. For the purposes of this chapter, the residence of an adult student is the address of the adult student, not the address of the adult student’s parent, custodian, guardian or other primary caregiver.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 10, as added Dec. 7, 2004, D.C. Law 15-205, § 4012(c), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see

§ 4012(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-301.

§ 38-308. Establishment of residency.

(a) The residency status of each student enrolling in a DCPS school or public

charter school funded by the District of Columbia or a student for whom educational services are paid by the District of Columbia shall be established by October 5, or within 10 days of the time of initial enrollment, whichever occurs later, within the school year for which the student is being enrolled. Residency status shall be re-established annually. Residency status shall be established through the use of satisfactory documentation as set forth in §§ 38-309 and 38-310. The State Education Office, pursuant to § 38-2604(b)(3), shall establish such rules and procedures to carry out residency verification as it deems appropriate and as are consistent with this chapter.

(b) For a student whose primary caregiver is not a parent, custodian or guardian, establishment of residency shall also include documentation that the District resident seeking to enroll the student is his or her primary caregiver, as set forth in § 38-310 and procedures established pursuant to § 38-311.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 11, as added Dec. 7, 2004, D.C. Law 15-205, § 4012(c), 51 DCR 8441; Aug. 16, 2008, D.C. Law 17-219, § 4012(b), 55 DCR 7598.)

Effect of amendments. — D.C. Law 17-219, in subsec. (a), substituted “charter school funded by the District of Columbia or a student for whom educational services are paid by the District of Columbia shall be established” for “charter school shall be established”.

Emergency legislation. — For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-301.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

§ 38-309. Documentation to be submitted at the attending school in order to establish residency.

(a) Documentation satisfactory to establish District residency for local school verification and certification must be delivered to the school principal or to his or her employee designee either by the person seeking to enroll the student or by that person’s appointed representative.

(b) One of the following items shall establish District residency for the purposes of this chapter:

(1) Proof of payment of District personal income tax, in the name of the person seeking to enroll the student, for the tax period closest in time to the consideration of District residency;

(2) A pay stub issued less than 45 days prior to consideration of residency in the name of the person seeking to enroll the student that shows his or her District residency and evidence of the withholding of District income tax;

(3) Current official documentation of financial assistance received by the person seeking to enroll the student, from the District Government including, but not limited to Temporary Assistance for Needy Families (TANF), Medicaid, the State Child Health Insurance Program (SCHIP), Supplemental Security Income (SSI), housing assistance, or other governmental programs;

(4) Confirmation, based upon completion and submission of a tax information authorization waiver form, by the District Office of Finance and Revenue of payment of District income taxes by the person seeking to enroll the student;

(5) Current official military housing orders showing residency in the District of the person seeking to enroll the student; or

(6) A currently valid court order indicating that the student is a ward of the District.

(c) Providing 2 of the following items shall also suffice as proof of residency in the District:

(1) A current motor vehicle registration in the name of the person seeking to enroll the student and evidencing District residency;

(2) A valid unexpired lease or rental agreement in the name of the person seeking to enroll the student, and paid receipts or canceled checks (for a period within 2 months immediately preceding consideration of residency) for payment of rent on a District residence in which the student actually resides;

(3) A valid unexpired District motor vehicle operator's permit or other official non-driver identification in the name of the person seeking to enroll the student; and

(4) Utility bills (excluding telephone bills) and paid receipts or cancelled checks (from a period within the 2 months immediately preceding consideration of residency) in the name of the person seeking to enroll the student that show a District residence address.

(d) If the person seeking to enroll the student is unable to produce documents complying with this section, the principal, or the principal's designated employee, at his or her option and with the agreement of the person seeking to enroll the student, may conduct a home visit to determine residency. Use of the home visit as a residency verification measure requires a sworn affidavit by the principal of the school or the principal's designee attesting that residency of the student was confirmed by a home visit, by the principal or the principal's designee, made within 45 days of enrollment. A residency verification home visit form must be completed by the principal or the principal's designee. Residency verification home visit forms shall be issued by the State Education Office, and shall be available at all DCPS Schools, public charter schools, the DCPS student residency office, the District Board of Education's Public Charter School Office, the Public Charter School Board, and the State Education Office.

(e) If the person seeking to enroll the student cannot establish residency pursuant to this subsection then the principal or the principal's designee attempting to verify residency shall refer the person to the DCPS student residency office or the appropriate chartering authorities, and procedures established by them pursuant to § 38-311 shall be followed.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 12, as added Dec. 7, 2004, D.C. Law 15-205, § 4012(c), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see

§ 4012(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-301.

§ 38-310. Documentation to be submitted to establish status as other primary caregiver.

(a) A person seeking to enroll a student as an other primary caregiver shall provide documentation that establishes his or her status as an other primary caregiver in conjunction with documentation that establishes the caregiver's residency status pursuant to §§ 38-308 and 38-309.

(b) Status as an other primary caregiver shall be established through the use of one of the following items:

(1) Previous school records indicating that the student is in the care of the caregiver;

(2) Immunization or medical records indicating that the student is in the care of the caregiver;

(3) Proof that the caregiver receives public or medical benefits on behalf of the student;

(4) A signed statement, sworn under penalty of perjury, that he or she is the primary caregiver for the student; or

(5) An attestation from a legal, medical or social service professional attesting to the caregiver's status relevant to the student.

(c) The statement submitted pursuant to paragraph (4) of this subsection shall be submitted on a standard form to be issued by the State Education Office, and shall be available at all District of Columbia public schools buildings, public charter schools, the DCPS student residency office, the Board of Education's public charter school office, the Public Charter School Board, and the State Education Office. The form shall delineate appropriate indicators of primary caregiver status. The statement need not be notarized, but shall make clear that it is sworn under penalty of perjury;

(d) The attestation submitted pursuant to paragraph (5) of this section shall be submitted on a standard form to be issued by the State Education Office. The form shall delineate appropriate indicators of the status, and shall be available at all District of Columbia public school buildings, public charter schools, the DCPS student residency office, the Board of Education's public charter school office, the Public Charter School Board, and the State Education Office. The attestation need not be notarized.

(e) If the person seeking to enroll the student cannot establish his or her primary caregiver status pursuant to this section then the principal or the principal's designee attempting to verify residency shall refer the person to the DCPS student residency office or the appropriate chartering authority and procedures established by the Board of Education or the appropriate chartering authority pursuant to § 38-311 shall be followed.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 13, as added Dec. 7, 2004, D.C. Law 15-205, § 4012(c), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see

§ 4012(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-301.

§ 38-311. Authorities to establish procedures if unable to confirm residency and other primary caregiver status at the attending school.

(a) The Board of Education and the chartering authorities shall establish such procedures as they deem appropriate to establish residency and other primary caregiver status in cases where persons seeking to enroll students in schools under their supervision are unable to prove residency or other primary caregiver status at the local school level under § 38-309 and 38-310. The established procedures shall be provided to the State Education Office by the aforementioned agencies no later than 30 calendar days before the first day of school.

(b) The procedures established pursuant to subsection (a) of this section shall:

(1) Provide for the designation of officials authorized to determine residency and other primary caregiver status;

(2) Include the designation of forms and methods to document residency and other primary caregiver status in addition to those set forth in this chapter, for use when documents set forth in this chapter are unavailable or are of questionable authenticity;

(3) Establish investigation and appeal procedures for persons seeking to enroll students whose residency or other primary caregiver documentation is found to be unsatisfactory;

(4) Provide for written notification of the determination of residency and other primary caregiver status to the person seeking to enroll the student, and, in the case of those whose documentation is found to be unsatisfactory, the reasons therefor and a written description of procedures for administrative review and appeal of the determination;

(5) Include rules and criteria to permit students to attend school without prepayment of tuition during any administrative review and appeal procedures on their residency status;

(6) Designate the point at which the administrative determination is final; and

(7) Include procedures for the payment of non-resident tuition on behalf of students found not to be residents of the District and for their exclusion from DCPS or public charter schools, upon their failure to pay such tuition.

(c) The procedures promulgated pursuant to this section shall be subject to approval by the State Education Office, which shall act to approve or disapprove the procedures within 30 calendar days of receipt of the proposed procedures.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 14, as added Dec. 7, 2004, D.C. Law 15-205, § 4012(c), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see

§ 4012(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-301.

§ 38-312. False information; penalty.

The fact that a parent or caregiver of a student has provided satisfactory evidence of residency or other primary caregiver status pursuant to this chapter shall not prevent a principal or other school administrator, a chartering authority, or the Office of the State Superintendent of Education from establishing by information and other evidence that a student or the student's parent or primary caregiver is not in fact a District of Columbia resident or an other primary caregiver. Any person, including any District of Columbia public schools or public charter school official, who knowingly supplies false information to a public official in connection with student residency verification shall be subject to charges of tuition retroactively, and payment of a fine of not more than \$2,000, or imprisonment for not more than 90 days, but not both a fine and imprisonment. The case of a person who knowing supplies false information may be referred by the Office of the State Superintendent of Education to the Office of Attorney General for consideration for prosecution.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 15, as added Dec. 7, 2004, D.C. Law 15-205, § 4012(c), 51 DCR 8441; May 9, 2012, D.C. Law 19-126, § 2(a), 59 DCR 1939.)

Effect of amendments. — D.C. Law 19-126 rewrote the section, which formerly read:

"The fact that a parent or caregiver of a student has provided satisfactory evidence of residency or other primary caregiver status pursuant to this chapter shall not prevent a principal or other school administrator, the Board of Education, a chartering authority, or the State Education Office from establishing by information and other evidence that a student or the student's parent or primary caregiver is not in fact a District of Columbia resident or an other primary caregiver. Any person, including any District of Columbia public schools or public charter school official, who knowingly supplies false information to a public official in connection with student residency verification shall be subject to charges of tuition retroactively, payment of a fine of not more than \$500, or imprisonment for not more than 90 days, or any combination thereof. The case of a person who knowing supplies false information may be referred to the Office of the Attorney General for consideration for prosecution."

Emergency legislation. — For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) repeal of section 3 of D.C. Law 19-126, see § 7012 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 19-126, see § 7012 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-301.

Legislative history of Law 19-126. — Law 19-126, the "District of Columbia Public Schools and Public Charter School Student Residency Fraud Prevention Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-228, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on January 4, 2012, and February 7, 2012, respectively. Signed by the Mayor on March 1, 2012, it was assigned Act No. 19-320 and transmitted to both Houses of Congress for its review. D.C. Law 19-126 became effective on May 9, 2012.

Editor's notes. — Section 3 of D.C. Law 19-126 provided that the act shall apply upon the inclusion of its fiscal effect in an approved

budget and financial plan. D.C. Law 19-126, § 3, was repealed by D.C. Law 19-168, § 7012.

§ 38-312.01. False information hotline.

(a) The Office of the State Superintendent of Education shall establish a hotline to receive tips and information regarding the non-District residence, or other primary caregiver status, of a parent or a primary caregiver of a student in a District of Columbia public school or a public charter school.

(b) District of Columbia public schools and public charter schools shall post a sign, which is clearly visible and not smaller than 8.5 inches by 11 inches, at each location where admission procedures take place and in each principal's office, notifying the public of the hotline and of the penalties set forth in this chapter.

(c) The Office of the State Superintendent of Education shall ensure that District of Columbia public schools and public charter schools investigate an allegation received through the hotline or through any other source of information.

(d)(1) The Office of the State Superintendent of Education shall refer to the Office of the Attorney General all cases concerning any person, including any official of a District of Columbia public school or public charter school, who knowingly supplies false information to a public official in connection with the verification of residency or primary caregiver status.

(2) The Attorney General shall keep a log of all cases referred by the Office of the State Superintendent of Education and issue a report by May 1, 2012. The report shall include:

- (A) The number of cases reported pursuant to this subsection;
- (B) The number of students involved in each case;
- (C) A list of schools involved in each case; and
- (D) The resources needed to prosecute each case.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 15a, as added May 9, 2012, D.C. Law 19-126, § 2(b), 59 DCR 1939.)

Emergency legislation. — For temporary (90 day) repeal of section 3 of D.C. Law 19-126, see § 7012 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 19-126, see § 7012 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-126. — For history of Law 19-126, see notes under § 38-312.

Editor's notes. — Section 3 of D.C. Law 19-126 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan. D.C. Law 19-126, § 3, was repealed by D.C. Law 19-168, § 7012.

§ 38-312.02. Student Residency Verification Fund.

(a) There is established as a nonlapsing fund the Student Residency Verification Fund ("Fund"), which shall be used for the purposes set forth in subsection (b) of this section. All funds deposited in the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the

General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) The Fund shall be used solely to fund enforcement activities concerning student residency and primary caregiver status verification.

(c) The Fund shall be administered by the Office of the State Superintendent of Education.

(d) There shall be deposited into the Fund all payments collected pursuant to this chapter.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 15b, as added May 9, 2012, D.C. Law 19-126, § 2(b), 59 DCR 1939.)

Emergency legislation. — For temporary (90 day) repeal of section 3 of D.C. Law 19-126, see § 7012 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 19-126, see § 7012 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-126. — For history of Law 19-126, see notes under § 38-312.

Editor's notes. — Section 3 of D.C. Law 19-126 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan. D.C. Law 19-126, § 3, was repealed by D.C. Law 19-168, § 7012.

§ 38-312.03. Report on the status of residency fraud investigations, levying and collection of fines, and retroactive tuition.

The Mayor shall submit a report to the Council on the status of residency fraud investigations and the levying and collection of fines and retroactive tuition within 30 days of May 9, 2012, and on an annual basis thereafter. The report for each local education agency shall include:

- (1) The number of cases investigated due to suspected fraud;
- (2) The number of cases that were determined to be residency fraud;
- (3) Of the cases that were determined to be residency fraud, the number that were assessed fines or retroactive tuition charges;
- (4) The amount of fines and retroactive tuition charges imposed; and
- (5) The amount of fines and retroactive tuition collected.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 15c, as added May 9, 2012, D.C. Law 19-126, § 2(b), 59 DCR 1939.)

Emergency legislation. — For temporary (90 day) repeal of section 3 of D.C. Law 19-126, see § 7012 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 19-126, see § 7012 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-126. — For history of Law 19-126, see notes under § 38-312.

Editor's notes. — Section 3 of D.C. Law 19-126 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan. D.C. Law 19-126, § 3, was repealed by D.C. Law 19-168, § 7012.

§ 38-313. Rules.

The Mayor shall promulgate rules pursuant to this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day period, the proposed rules shall be deemed approved.

(Sept. 8, 1960, 74 Stat. 854, Pub. L. 86-725, § 16, as added Dec. 7, 2004, D.C. Law 15-205, § 4012(c), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 4012(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see

§ 4012(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-301.

CHAPTER 3A. OMBUDSMAN FOR PUBLIC EDUCATION.

Sec.

38-351. Office of Ombudsman; establishment;
term.

38-352. Qualifications.

Sec.

38-353. Duties.

38-354. Authority.

38-355. Limitations; protections.

§ 38-351. Office of Ombudsman; establishment; term.

(a)(1) There is established within the Department of Education an Office of Ombudsman for Public Education (“Office of Ombudsman”), which shall be headed by an Ombudsman appointed by the Mayor and confirmed by the Council in accordance with paragraph (2) of this subsection.

(2) The Mayor shall submit a nomination for Ombudsman to the Council for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the nomination, by resolution, within this 45-day review period, the nomination shall be deemed approved.

(b) If a vacancy in the position of Ombudsman occurs as a consequence of resignation, disability, death, or other reason other than expiration of term, the Mayor shall appoint a replacement to fill the unexpired term in the same manner as provided in subsection (a) of this section; provided, that the Mayor shall submit the nomination to the Council within 30 days after the occurrence of the vacancy.

(c) The Ombudsman shall serve for a term of 3 years, and may be reappointed.

(June 12, 2007, D.C. Law 17-9, § 602, 54 DCR 4102.)

Legislative history of Law 17-9. — Law 17-9, the “Public Education Reform Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-1, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on April 23, 2007, it was assigned

Act No. 17-38 and transmitted to both Houses of Congress for its review. D.C. Law 17-9 became effective on June 12, 2007.

Editor’s notes. — Applicability: Section 607 of Law 17-9 provided that this title shall apply upon Congressional enactment of Title IX. Congress enacted the provisions of Title IX in Pub. L. 110-33, approved June 1, 2007.

§ 38-352. Qualifications.

The Ombudsman shall:

(1) Be appointed without regard to party affiliation;

(2) Be appointed on the basis of integrity;

(3) Possess a demonstrated ability to analyze issues and matters of law, administration, and policy;

(4) Possess experience in the field of social work, counseling, mediation, law, policy, or public administration or auditing, accounting, or other investigative field; and

(5) Have management experience that demonstrates an ability to hire and supervise qualified staff.

(June 12, 2007, D.C. Law 17-9, § 603, 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-351.

§ 38-353. Duties.

(a) The Ombudsman shall:

(1) Provide outreach to residents and parents, and to further this purpose, have the cooperation of all individuals within the public school system;

(2) Encourage communication between residents and the Mayor regarding all levels of public education;

(3) Serve as a vehicle for citizens to communicate their complaints and concerns regarding public education through a single office;

(4) Respond to complaints and concerns in a timely fashion with accurate and helpful information;

(5) Receive complaints and concerns from parents, students, teachers, and other District residents concerning public education, including personnel actions, policies, and procedures;

(6) Determine the validity of any complaint quickly and professionally;

(7) Examine and address valid complaints and concerns;

(8) Generate options for a response, and offer a recommendation among the options;

(9) Make a referral to the pertinent school official, when appropriate;

(10) Identify systemic concerns raised by citizens, or otherwise received, related to public education;

(11) Maintain a database that tracks complaints and concerns received according to various categories, including school level and location;

(12) Submit to the Deputy Mayor for Public Education and the Chairman of the Council, on a monthly basis, an analysis of the preceding month, including complaint and resolution data;

(13) Recommend policy changes, staff training, and strategies to improve the delivery of public education services;

(14) Systemically track complaints and concerns, and periodically analyze the data and report to the Deputy Mayor for Education patterns of complaints and concerns that suggest a need for a policy change, staff training, or the implementation of strategic action to address an issue; and

(15) Within 90 days of the end of each school year, submit to the Deputy Mayor for Education a report analyzing the work of the previous year, including an analysis of the types, and number, of:

(A) Inquiries;

(B) Complaints and concerns resolved informally;

(C) Complaints and concerns examined;

(D) Examinations pending;

(E) Recommendations made; and

(F) Recommendations that were followed, to the extent that it can be determined.

(June 12, 2007, D.C. Law 17-9, § 604, 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-351.

§ 38-354. Authority.

The Ombudsman shall:

(1) Have access to books, records, files, reports, findings, and all other papers, items, or property belonging to or in use by all departments, agencies, instrumentalities, and employees of District of Columbia Public Schools (“DCPS”) necessary to facilitate the purpose of this chapter, excluding the Executive Office of the Mayor, the Council, and the District of Columbia courts;

(2) Have full access to student educational records as allowed by federal and local law;

(3) Speak in regard to educational issues under the purview of the Office of Ombudsman with any official or employee within the public school system without the permission of the individual’s supervisor;

(4) Examine an act or failure to act of any official or employee within the public school system;

(5) Determine which complaints and concerns warrant further examination;

(6) Examine any matter under the purview of the Office of Ombudsman absent a complaint;

(7) Forward to the Office of the Inspector General all complaints and concerns that require an audit or investigation of a school or a program, agency, or department within DCPS that falls within the purview of the Office of the Inspector General; and

(8) Forward to the Deputy Mayor for Education any policy recommendations that the Ombudsman determines would be helpful to prevent and detect corruption, mismanagement, waste, fraud, and abuse within DCPS.

(June 12, 2007, D.C. Law 17-9, § 605, 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-351.

§ 38-355. Limitations; protections.

(a) The Ombudsman shall not:

(1) Disclose personally identifiable information regarding a student without the specific written consent of the student or parent, as required by federal and local law;

(2) Disclose the substance of a conversation with any teacher or other official or employee within the public school system without consent;

(3) Disclose the identity of any person who brings a complaint or provides information to the Ombudsman without the person’s consent, unless the Ombudsman determines that disclosure is unavoidable or necessary to further the ends of an investigation;

(4) Have the authority to take any personnel action; or

(5) Examine the Executive Office of Mayor, the Council or its personnel, or the District of Columbia courts or its personnel.

(b) The Ombudsman shall not:

(1) Be compelled to testify in a legal or administrative proceeding regarding an Office of Ombudsman examination or to release information gathered during the course of an examination or investigation;

(2) Be held personally liable for the good faith performance of his or her responsibilities under this chapter, except that no immunity shall extend to criminal acts, or other acts that violate District or federal law; or

(3) Be subject to retaliatory action for the good faith performance of his or her responsibilities under this chapter.

(June 12, 2007, D.C. Law 17-9, § 606, 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-351.

CHAPTER 4. USE OF SCHOOL BUILDINGS.

Sec.	Sec.
38-401. Entrances to school buildings.	38-406. Certain land granted for colored schools to revert to United States [Repealed].
38-401.01. Annual report.	
38-401.02. Public liability insurance.	38-407. Property exclusively for school purposes.
38-402. Control of school construction and repairs.	38-408. Utilization of Business High School building.
38-403. Use of Franklin School for office purposes.	38-409. Entrances to school buildings.
38-404. Restriction on lot 14 in square 263.	
38-405. Sale of part of lot 14 in square 263.	

§ 38-401. Entrances to school buildings.

(a) The control of the public schools in the District of Columbia by the Board of Education shall extend to include the negotiation and approval of use, license, and lease agreements, with or without monetary consideration, with respect to the use of public school buildings and parts thereof and the grounds appurtenant thereto, and land intended for such use, by or for any of the following:

(1) Any agency or agencies of the District of Columbia government, the United States government, or any international organization;

(2) Any person or organization providing an educational or recreational program involving students of the public schools, other children, youth, or adults;

(3) Any person or organization providing a supplementary educational program;

(4) Any person or organization conducting civic meetings for the free discussion of public questions;

(5) Any person or organization operating a social center, including, but not limited to, the following:

(A) A preschool center, child development center, or day care center;

(B) A health clinic or a counseling service;

(C) A community service program;

(D) A community-based consumer cooperative; or

(E) A studio or workshop for instruction, display, performance or promotion of the arts, or for other art-related purposes;

(6) A playground or center for recreational activity; or

(7) Any other use which the Board of Education may deem to be compatible with the normal use of the particular property and in the best interest of the local community, other than industrial uses, and which does not require major structural renovations at cost to the District of Columbia government to implement a particular agreement.

(b) In the execution of subsection (a) of this section, preference shall be given to agencies of the District of Columbia government.

(c) All fees and proceeds derived from licenses or use agreements entered into pursuant to this section and §§ 38-401.01 and 38-401.02 shall be paid to the Treasury of the District of Columbia, under regulations issued by the Mayor, and accounted for in the General Fund as a separate revenue source

allocable to provide authority for the Board of Education to expend for the custody, cleaning, heating, air-conditioning, lighting, maintenance, security, and improvement of public school buildings and grounds, and the management of these licenses and use agreements. Any unobligated balance remaining 90 days subsequent to the end of the fiscal year in which the revenues were received shall be transferred by the Board of Education to the debt service fund to be applied toward the repayment of capital outlay loans and interest outstanding on public school buildings and grounds acquired and held for school purposes, pursuant to § 1-105 over and above the amount appropriated by the Congress of the United States to the District of Columbia for such purposes.

(c-1) All proceeds received by the Board of Education for leasing school buildings shall be deposited into the unrestricted fund balance of the General Fund of the District of Columbia.

(d) The authority of the Board of Education pursuant to this section shall be in addition to, and not in derogation of, the authority granted to the Board of Education by § 38-153 and by §§ 10-212, 10-223, and 10-224, insofar as these provisions relate to the use of buildings and grounds under the control of the Board of Education.

(e) The Board of Education shall, in accordance with subchapter I of Chapter 5 of Title 2, issue rules for the consideration and review of applications for the use of public school buildings and grounds by lease or otherwise, pursuant to this section. Final approval of each lease, license, or use agreement entered into by the Board of Education pursuant to this section and §§ 38-401.01 and 38-401.02 shall be reserved to the Board of Education which may delegate to the Superintendent any of its authority.

(Mar. 4, 1915, 38 Stat. 1190, ch. 165, § 1; Sept. 29, 1982, D.C. Law 4-158, §§ 2, 5, 29 DCR 3632; Sept. 11, 1990, D.C. Law 8-158, § 5, 37 DCR 4167; Sept. 14, 2011, D.C. Law 19-21, § 9062, 58 DCR 6226.)

Section references. — This section is referred to in § 38-401.1.

Prior Codifications. — 1981 Ed., § 31-201. 1973 Ed., § 31-801.

Effect of amendments. — D.C. Law 19-21, in subsec. (c-1), substituted “unrestricted fund balance of the General Fund of the District of Columbia” for “Board of Education Real Property Improvement and Maintenance Fund established by the Board of Education Real Property Disposal Act of 1990”.

Temporary Addition of Section. — Section 4 of D.C. Law 11-215 amended subsection (c-1) to read as follows: “(c-1) All proceeds received by the Board of Education for leasing school properties, including payments in lieu of taxes, shall be deposited into the Board of Education Real Property Improvement and Maintenance Fund established by § 9-402(b)(1) § 10-802, 2001 Ed., and shall be available for expenditure, for the purposes set forth in that chapter until actually expended.”

Section 7(b) of D.C. Law 11-215 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 4 of the Oyster Elementary School Modernization and Development Project Emergency Act of 1996 (D.C. Act 11-385, August 28, 1996, 43 DCR 4799), and § 4 of the Oyster Elementary School Modernization and Development Project Congressional Adjournment Emergency Act of 1996 (D.C. Act 11-437, December 4, 1996, 44 DCR 104).

Legislative history of Law 4-158. — Law 4-158, “District of Columbia Board of Education Leasing Authority Act of 1982,” was introduced in Council and assigned Bill No. 4-223, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 22, 1982, and July 6, 1982, respectively. Signed by the Mayor on July 29, 1982, it was assigned Act No. 4-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-158. — Law 8-158 was introduced in Council and assigned Bill No. 8-383, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-215. — Law 11-215, the "Oyster Elementary School Modernization and Development Project Temporary

Act of 1996," was introduced in Council and assigned Bill No. 11-828. The Bill was adopted on first and second readings on July 17, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 15, 1996, it was assigned Act No. 11-413 and transmitted to both Houses of Congress for its review. D.C. Law 11-215 became effective on April 9, 1997.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

§ 38-401.01. Annual report.

The Board of Education shall submit to the Mayor of the District of Columbia and the Council of the District of Columbia, not later than January 15th of each year, a report covering all activities with respect to public school buildings and grounds that were undertaken during the preceding fiscal year pursuant to the authority granted by this section and §§ 38-401 and 38-401.02. Such report shall include, but shall not be limited to:

(1) All lease, use, or other agreements exceeding a period of 30 days, indicating the name of the tenant and the terms and conditions of the agreement;

(2) An itemization of all collections and expenditures associated with each agreement;

(3) A statement of the actual amount of funds transferred by the Board of Education towards the repayment of capital outlay loans and interest outstanding;

(4) A statement of the actual condition of major structural components of each property under an agreement, and any repairs or improvements made thereto;

(5) A list, including each parcel, of real property transferred by the Board of Education to the Department of General Services and the date of each transfer; and

(6) A statement by the Board of Education of benefits and enhancements to the educational environment and the community resulting from the authority granted by this section and §§ 38-401 and 38-401.02, and recommendations, if any, for the improvement thereof.

(Sept. 29, 1982, D.C. Law 4-158, § 3, 29 DCR 3632.)

Section references. — This section is referred to in § 38-401.

Prior Codifications. — 1981 Ed., § 31-201.1.

Legislative history of Law 4-158. — For legislative history of D.C. Law 4-158, see Historical and Statutory Notes following § 38-401.

Transfer of Functions. — The functions of

the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

§ 38-401.02. Public liability insurance.

The Board of Education may by regulation require persons and organiza-

tions, other than District of Columbia and federal agencies, holding use agreements or lease agreements with the Board of Education to carry public liability insurance including protection of the interests of the District of Columbia and its officers, employees, and agents, and the Board of Education and its members, officers, employees, and agents, with respect to claims for personal injuries and other damages allegedly occurring at properties where these leases or use agreements exist.

(Sept. 29, 1982, D.C. Law 4-158, § 4, 29 DCR 3632.)

Section references. — This section is referred to in §§ 38-401 and 38-401.01.

Prior Codifications. — 1981 Ed., § 31-201.2.

Legislative history of Law 4-158. — For legislative history of D.C. Law 4-158, see Historical and Statutory Notes following § 38-401.

§ 38-402. Control of school construction and repairs.

The Director of the Department of Consumer and Regulatory Affairs (“Director”) shall have the same authority, control over, and supervision of the construction or repair of a public school building as the Director has of the construction or repair of any privately owned building.

(Mar. 3, 1879, 20 Stat. 408, ch. 182; June 22, 1990, D.C. Law 8-143, § 4, 37 DCR 2972.)

Cross references. — Minor repairs by janitors, see § 38-903.

Prior Codifications. — 1981 Ed., § 31-202. 1973 Ed., § 31-803.

Legislative history of Law 8-131. — Law 8-131 was introduced in Council and assigned Bill No. 8-529. The Bill was adopted on first and second readings on February 27, 1990, and March 13, 1990, respectively. Signed by the Mayor on March 27, 1990, it was assigned Act No. 8-183 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-143. — Law 8-143 was introduced in Council and assigned Bill No. 8-504, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 26, 1990, it was assigned Act No. 8-199 and transmitted to both Houses of Congress for its review.

§ 38-403. Use of Franklin School for office purposes.

The Board of Education is authorized to use all necessary floor and room space in the Franklin School Building for office purposes.

(Mar. 3, 1917, 39 Stat. 1026, ch. 160; June 5, 1920, 41 Stat. 855, ch. 234; Feb. 26, 1925, 43 Stat. 993, ch. 342, § 5.)

Prior Codifications. — 1981 Ed., § 31-203. 1973 Ed., § 31-804.

§ 38-404. Restriction on lot 14 in square 263.

The lot of land marked upon the plan of the City of Washington as lot No. 14, in square No. 263, which was conveyed to said City by the Commissioner of Public Buildings, under authority of an Act of Congress dated June 5, 1860, for

the use of the public schools in said City, shall not be sold, assigned or conveyed or diverted, for any other purpose except as provided in § 38-405.

(R.S., D.C., § 317.)

Prior Codifications. — 1981 Ed., § 31-204. 1973 Ed., § 31-805.

§ 38-405. Sale of part of lot 14 in square 263.

The proceeds of that portion of lot No. 14, in square No. 263, which was authorized to be sold by an Act of Congress dated June 4, 1872, shall be invested by the authorities of the District in another lot or part of a lot in the City of Washington, and in improvements thereon; and the property so purchased shall be used for the purpose of the public schools, and for no other purpose.

(R.S., D.C., § 318.)

Section references. — This section is referred to in § 38-404.

Prior Codifications. — 1981 Ed., § 31-205. 1973 Ed., § 31-806.

§ 38-406. Certain land granted for colored schools to revert to United States [Repealed].

Repealed.

(Dec. 10, 1987, D.C. Law 7-45, § 2, 34 DCR 6845; July 25, 1990, D.C. Law 8-149, § 2, 37 DCR 3717; Aug. 17, 1991, D.C. Law 9-29, § 2, 38 DCR 4213; Mar. 20, 1998, D.C. Law 12-60, § 401, 44 DCR 7378; Apr. 13, 1999, D.C. Law 12-224, § 2, 46 DCR 483.)

Prior Codifications. — 1981 Ed., § 31-206. 1973 Ed., § 31-807.

Temporary Repeal of Section Section 2 of D.C. Law 13-220 repealed this section.

Section 4(b) of D.C. Law 13-220 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) repeal of section, see § 2 of the Lovejoy School new Housing and Economic Development Emergency Act of 2000 (D.C. Act 13-461, November 7, 2000, 47 DCR 9440).

Legislative history of Law 13-220. — Law 13-220, the “Lovejoy School New Housing and Economic Development Temporary Act of 2000”, was introduced in Council and assigned Bill No. 13-841. The Bill was adopted on first and second readings on October 3, 2000, and November 8, 2000, respectively. Signed by the Mayor on November 29, 2000, it was assigned Act No. 13-478 and transmitted to both Houses of Congress for its review. D.C. Law 13-220 became effective on April 3, 2001.

§ 38-407. Property exclusively for school purposes.

That parcel of land marked and designated upon the map of the City of Washington as part of lot No. 11, in square No. 141, beginning at the northwest corner of said lot, and running thence due south on the west line of said square, 50 feet; thence due east, 30 feet; thence due north, 50 feet; thence due west on the north line of said square, to the point of beginning, and also that piece of land marked and designated upon said map as a public reservation, located between 8th and 9th Streets and K Street and Virginia Avenue Southeast, known as the Anacostia engine house, together with the buildings and

improvements thereon, are severally set apart and appropriated for the use of the public schools in the City of Washington, so long as they shall be occupied for that purpose, and no longer.

(R.S., D.C., § 320.)

Prior Codifications. — 1981 Ed., § 31-207. 1973 Ed., § 31-808.

§ 38-408. Utilization of Business High School building.

Upon completion of the Roosevelt (Business) High School the building now occupied by the Business High School shall be utilized for senior high and elementary school purposes.

(Feb. 23, 1931, 46 Stat. 1395, ch. 282, § 1.)

Prior Codifications. — 1981 Ed., § 31-208. 1973 Ed., § 31-809.

§ 38-409. Entrances to school buildings.

On and after June 28, 1944, appropriations for the District of Columbia shall not be used for the maintenance of school in any building unless all outside doors thereto used as exits or entrances shall open outward and be kept unlocked every school day from one-half hour before until one-half hour after school hours.

(June 28, 1944, 58 Stat. 515, ch. 300, § 1.)

Prior Codifications. — 1981 Ed., § 31-209. 1973 Ed., § 31-812.

Temporary Addition of Section. — Temporary Oyster Elementary School modernization and development project: Section 2 of D.C. Law 11-215 provided: "Sec. 2. Definitions. For purposes of this chapter, the terms: (1) "Board" means the Board of Education of the District of Columbia. (2) "Council" means the Council of the District of Columbia. (3) "District" means the District of Columbia Government. (4) "Mayor" means the Mayor of the District of Columbia. (5) "Payments in lieu of taxes" means payments into the Board of Education Real Property Improvement and Maintenance Fund, established by § 9-402(b)(1), of the equivalent of Class II property taxes at 100% of the assessed valuation of the privately owned building or structure occupying any portion of the Oyster School site. (6) "Privately owned structure" means any building or structure not owned by the District of Columbia government or any of its agencies that is erected on the Oyster School site under a long-term lease or other agreement between a developer and the District of Columbia Public Schools." Section 3 of D.C. Law 11-215 provided: "Sec. 3. Authorization of private development of the Oyster Elementary School site. (a) The Board of Education, pursuant to § 31-201 § 38-401, 2001

Ed., is authorized to enter into a long-term land lease for private development of part of the James F. Oyster Elementary School site. Pursuant to § 31-201(c) § 38-401, 2001 Ed., all proceeds derived from the private development, including payments in lieu of taxes ("PILOTS"), shall be deposited into the Board of Education Real Property Improvement and Maintenance Fund. Any proceeds which remain after paying the costs of modernizing Oyster Elementary School shall be used for repair, modernization and improvements of other school system facilities. (b) Privately owned or used structure, erected or constructed on the Oyster School site, shall annually pay in lieu of taxes an amount that is equivalent to Class II property taxes at 100% of the assessed valuation of the privately owned or used structure."

Section 5 of D.C. Law 11-215 provided that "the Mayor, or in a control year, the Chief Financial Officer on behalf of the Mayor, shall issue rules to implement the provisions of this act. The rules shall be submitted to the Council of the District of Columbia within 60 days of enactment of this act."

Section 7(b) of D.C. Law 11-215 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary authorization, on an emergency basis, to pri-

vately develop a portion of the James F. Oyster School site, and to fund improvements to the Oyster School and other public school facilities through payments in lieu of taxes on the privately developed portion of the Oyster School site and for the issuance of rules to implement these provisions, see §§ 2, 3, and 5 of the Oyster Elementary School Modernization and Development Project Emergency Act of 1996 (D.C. Act 11-385, August 28, 1996, 43 DCR 4799) and §§ 2, 3, and 5 of the Oyster Elementary School Modernization and Development Project Congressional Adjournment Emergency

Act of 1996 (D.C. Act 11-437, December 4, 1996, 44 DCR 104).

Legislative history of Law 11-215. — Law 11-215, the “Oyster Elementary School Modernization and Development Project Temporary Act of 1996,” was introduced in Council and assigned Bill No. 11-828. The Bill was adopted on first and second readings on July 17, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 15, 1996, it was assigned Act No. 11-413 and transmitted to both Houses of Congress for its review. D.C. Law 11-215 became effective on April 9, 1997.

CHAPTER 4A. OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION.

Subchapter I. Establishment

Sec.

38-451 to 38-454. [Repealed].

Subchapter II. DCPS Realty Office Transfer to OFM

38-471. Transfer of functions and authority to OFM.

*Subchapter I. Establishment.***§ 38-451. Office of Public Education Facilities Modernization; establishment. [Repealed].**

Repealed.

(June 12, 2007, D.C. Law 17-9, § 702, 54 DCR 4102; Sept. 18, 2007, D.C. Law 17-20, § 4043(a), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 4018, 55 DCR 7598; Sept. 14, 2011, D.C. Law 19-21, § 1032(b), 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 4043(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment, see § 4018 of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

For temporary (90 day) repeal of section, see § 1012(b) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 17-9. — Law 17-9, the “Public Education Reform Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-1, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on April 23, 2007, it was assigned Act No. 17-38 and transmitted to both Houses of Congress for its review. D.C. Law 17-9 became effective on June 12, 2007.

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support

Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 4017 of D.C. Law 17-219 provided that subtitle I of title IV of the act may be cited as the “Office of Public Education Facilities Modernization Personnel Amendment Act of 2008”.

§ 38-452. Director; appointment. [Repealed].

Repealed.

(June 12, 2007, D.C. Law 17-9, § 703, 54 DCR 4102; Sept. 14, 2011, D.C. Law 19-21, § 1032(b), 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 1012(b) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-451.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-451.

§ 38-453. Director; authority. [Repealed].

Repealed.

(June 12, 2007, D.C. Law 17-9, § 704, 54 DCR 4102; Mar. 20, 2008, D.C. Law 17-122, § 6, 55 DCR 1506; July 18, 2008, D.C. Law 17-202, § 605, 55 DCR 6297; July 27, 2010, D.C. Law 18-209, § 507, 57 DCR 4779; Sept. 14, 2011, D.C. Law 19-21, § 1032(b), 58 DCR 6226.)

Temporary Amendment of Section. — Section 4 of D.C. Law 17-97, in par. (6), substituted “including planning, design, maintenance,” for “including planning, design,” and “provided, that it shall not manage cleaning and janitorial services at DCPS facilities.” for “provided, that it shall not manage routine maintenance at DCPS facilities.”

Section 7(b) of D.C. Law 17-97 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 17-363, in par. (6), substituted “Be limited to directing and managing the modernization or new construction of only District of Columbia Public Schools (‘DCPS’) facilities, including sites that were in DCPS inventory on June 12, 2007, but are no longer DCPS facilities,” for “Direct and manage the modernization or new construction of District of Columbia Public Schools (‘CPS’) facilities” and substituted “provided further, that nothing shall prevent OFM from directing and managing the modernization of Stoddard Elementary School and Stoddard Recreation Center,” for “facilities.”

Section 4(b) of D.C. Law 17-363 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Section 2 of D.C. Law 18-185 added a section to read as follows:

“Sec. 704a. Mentorship program.

“(a) There is established a Department of Parks and Recreation Capital Project Mentorship Program (‘DPRMP’) in the OPEFM.

“(b) The Director of the Department of Parks and Recreation (‘DPR’) is authorized to assign DPR’s capital construction full-time employees to OPEFM for the DPRMP.

“(c) OPEFM has the authority to direct and manage the modernization or new construction of Department of Parks and Recreation capital projects (‘Project’), as authorized funds become available, for the following sites:

“(1) Noyes;

“(2) Eighteenth and Michigan Avenue;

“(3) Harry Thomas, Sr. Recreation Center;

“(4) Dakota Playground;

“(5) New York Avenue Playground;

“(6) Langdon Park;

“(7) Edgewood Recreation Center;

“(8) Brentwood Recreation Center;

“(9) First and Florida Avenue, N.W.;

“(10) Trinidad Recreation Center;

“(11) Justice Park;

“(12) Park View;

“(13) Seventh and N Street;

“(14) Eleventh and Monroe, Street, N.W.;

“(15) Shepherd Field; and

“(16) Watkins Park.

“(d) Prior to acting on each Project, OPEFM shall submit rules to the Council for a 10-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If a member of the Council introduces a resolution of approval or disapproval within the 10-day period of review, the period of review is extended for 45 days. The rules shall include:

“(1) The project name and location;

“(2) The date on which funds were authorized for the Project;

“(3) The DPR’s specific role in the Project; and

“(4) A plan to include Certified Business Enterprises (‘CBEs’) pursuant to the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 et seq.).

“(e) Every 60 days after OPEFM’s rules are approved pursuant to subsection (d) of this section, DPR shall submit to the Council a report to include:

“(1) A summary of how practices utilized by OPEFM in capital construction will be incorporated by DPR’s capital projects staff following the completion of the DPRMP;

“(2) The number and names of CBEs working on the Project;

“(3) The percentage of District residents employed on the Project; and

“(4) Funds expended to date on the Project.”.

Section 4(b) of D.C. Law 18-185 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 4 of School Modernization Use of Funds Requirements Emergency Amendment Act of 2007 (D.C. Act 17-129, October 5, 2007, 54 DCR 10030).

For temporary (90 day) amendment of section, see § 4 of School Modernization Use of Funds Requirement Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-229, December 27, 2007, 55 DCR 225).

For temporary (90 day) amendment of section, see § 6 of Public Education Personnel Reform Emergency Amendment Act of 2007 (D.C. Act 17-241, January 22, 2008, 55 DCR 983).

For temporary (90 day) amendment of section, see § 2 of Office of Public Education Facilities Modernization Clarification Emergency Amendment Act of 2008 (D.C. Act 17-575, December 8, 2008, 55 DCR 12617).

For temporary (90 day) amendment of section, see § 2 of Office of Public Education Facilities Modernization Clarification Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-26, March 16, 2009, 56 DCR 2315).

For temporary (90 day) addition, see § 2 of Department of Parks and Recreation Capital Construction Mentorship Program Amendment Act of 2010 (D.C. Act 18-367, April 6, 2010, 57 DCR 3170).

For temporary (90 day) repeal of section, see § 1012(b) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-451.

Legislative history of Law 17-122. — Law 17-122, the “Public Education Personnel Reform Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-450 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 29, 2008, it was assigned Act No. 17-271 and transmitted to both Houses of Congress for its review. D.C. Law 17-122 became effective on March 20, 2008.

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-202.

Legislative history of Law 18-209. — Law 18-209, the “Healthy Schools Act of 2010”, was introduced in Council and assigned Bill No. 18-564, which was referred to the Committee of the Whole and the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 21, 2010, it was assigned Act No. 18-428 and transmitted to both Houses of Congress for its review. D.C. Law 18-209 became effective on July 27, 2010.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-451.

Delegation of Authority. — Delegation of authority to Allen Lew of the Mayor’s Authority under the Public Education Reform Amendment Act of 2007 relating to facilities, see Mayor’s Order 2007-164, July 23, 2007 (54 DCR 11591).

Resolutions. — Resolution 18-605, the “Park and Recreation Center Mentorship Projects Emergency Approval Resolution of 2010”, was approved effective July 13, 2010.

§ 38-454. Reporting requirement. [Repealed].

Repealed.

(June 12, 2007, D.C. Law 17-9, § 705, 54 DCR 4102; Sept. 14, 2011, D.C. Law 19-21, § 1032(b), 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 1012(b) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-451.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-451.

Subchapter II. DCPS Realty Office Transfer to OFM.

§ 38-471. Transfer of functions and authority to OFM.

(a) All functions, authority, programs, positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds

available or to be made available to the District of Columbia Public Schools Realty Office shall be transferred to the Office of Public Education Facilities Modernization by March 3, 2010.

(b) All rules, orders, obligations, determinations, grants, contracts, licenses, and agreements of the District of Columbia Public Schools Realty Office transferred to the Office of Public Education Facilities Modernization under subsection (a) of this section shall continue in effect according to their terms until lawfully amended, repealed, or modified.

(Mar. 3, 2010, D.C. Law 18-111, § 4151, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 4151 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 4151 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and

assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 4150 of D.C. Law 18-111 provided that subtitle P of title IV of the act may be cited as the “District of Columbia Public Schools Realty Office Transfer Act of 2009”.

CHAPTER 5. IMMUNIZATION OF SCHOOL STUDENTS.

Sec.	Sec.
38-501. Definitions.	38-505. Attendance without certification.
38-502. Certification of immunization required.	38-506. Exemption from certification.
38-503. Immunization standards; list of immunizations.	38-507. Immunization plan; suspension of chapter.
38-504. Notification of immunization information by school.	38-508. Severability.

§ 38-501. Definitions.

For the purpose of this chapter:

(1) The term “admit” or the term “admission” means the official enrollment at any level by a school of a student that entitles the student to attend the school regularly, whether full-time or part-time, and to participate fully in all the activities established for a student of his or her age, educational level, or other appropriate classification.

(2) The term “certification of immunization” means written certification by a private physician, his or her representative, or the public health authorities that the student is immunized.

(3) The term “student” means any person who seeks admission to school, or for whom admission to school is sought by a parent or guardian, and who will not have attained the age of 26 years by the start of the school term for which admission is sought.

(4) The term “immunized” or the term “immunization” means initial immunization and any boosters or reimmunization required to maintain immunization against diphtheria, poliomyelitis, tetanus, rubella, measles, and mumps in accordance with the immunization standards issued by the public health authorities pursuant to this chapter.

(5) The term “Mayor” means the Mayor of the District of Columbia.

(6) The term “public health authorities” means the official or officials of the executive branch of the government of the District of Columbia designated by the Mayor pursuant to this chapter.

(7) The term “responsible person” means, in the case of a student under 18 years of age, a parent or guardian of the student, but in the case of a student 18 years of age or older, the student himself or herself.

(8) The term “school” means:

(A) Any public school through the 12th grade operated under the authority of the Board of Education of the District of Columbia;

(B) Any private or parochial school that offers instruction at any level or grade from kindergarten through 12th;

(C) Any private or parochial nursery school or preschool, or any private or parochial day-care facility required to be licensed by the District of Columbia; and

(D) Any college or university created or incorporated by special act of Congress or the Council of the District of Columbia or required to be licensed by the District of Columbia.

(Sept. 28, 1979, D.C. Law 3-20, § 2, 26 DCR 380.)

Prior Codifications. — 1981 Ed., § 31-501. 1973 Ed., § 31-2201.

Legislative history of Law 3-20. — Law 3-20 was introduced in Council and assigned Bill No. 3-66, which was referred to the Committee on Human Resources. The Bill was adopted on first, amended first, and second readings on May 22, 1979, June 5, 1979, and June 19, 1979, respectively. Signed by the Mayor on

July 12, 1979, it was assigned Act No. 3-64 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of Authority to the Director of the Department of Health Immunization of School Students Act of 1979, see Mayor's Order 2009-149, September 3, 2009 (56 DCR 7520).

§ 38-502. Certification of immunization required.

No student shall be admitted by a school unless the school has certification of immunization for that student, or unless the student is exempted pursuant to § 38-506.

(Sept. 28, 1979, D.C. Law 3-20, § 3, 26 DCR 380.)

Prior Codifications. — 1981 Ed., § 31-502. 1973 Ed., § 31-2202.

Legislative history of Law 3-20. — For

legislative history of D.C. Law 3-20, see Historical and Statutory Notes following § 38-501.

§ 38-503. Immunization standards; list of immunizations.

The Mayor shall, by regulations, specify the immunization standards to be used for compliance with this chapter, and may also, by regulation, revise the list of requested immunizations.

(Sept. 28, 1979, D.C. Law 3-20, § 4, 26 DCR 380.)

Prior Codifications. — 1981 Ed., § 31-503. 1973 Ed., § 31-2203.

Legislative history of Law 3-20. — For legislative history of D.C. Law 3-20, see Historical and Statutory Notes following § 38-501.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 3-20, the Immunization of School Students Act of 1979, see Mayor's Order 2006-117, September 5, 2006 (53 DCR 7553).

§ 38-504. Notification of immunization information by school.

(a) With respect to any student for whom a school does not have certification of immunization, the school shall notify a responsible person:

- (1) That it has no certification of immunization for the student;
- (2) That it may not admit the student without certification (unless the student is exempted on medical or religious grounds pursuant to § 38-506);
- (3) That the student may be immunized and receive certification by a private physician or the public health authorities; and
- (4) How to contact the public health authorities to learn where and when they perform these services.

(b) Neither the District of Columbia nor any school or school official shall be liable in damages to any person for failure to comply with this section.

(Sept. 28, 1979, D.C. Law 3-20, § 5, 26 DCR 380.)

Prior Codifications. — 1981 Ed., § 31-504. legislative history of D.C. Law 3-20, see Historical and Statutory Notes following § 38-501.
1973 Ed., § 31-2204.

Legislative history of Law 3-20. — For

§ 38-505. Attendance without certification.

A school shall permit a student to attend for not more than 10 days while the school does not have certification of immunization for that student. If immunization requires a series of treatments that cannot be completed within the 10 days, the student shall be permitted to attend school while the treatments are continuing if, within the 10 days, the school receives written notification from whomever is administering it that the immunization is in progress.

(Sept. 28, 1979, D.C. Law 3-20, § 6, 26 DCR 380.)

Prior Codifications. — 1981 Ed., § 31-505. legislative history of D.C. Law 3-20, see Historical and Statutory Notes following § 38-501.
1973 Ed., § 31-2205.

Legislative history of Law 3-20. — For

§ 38-506. Exemption from certification.

No certification of immunization shall be required for the admission to a school of a student:

(1) For whom the responsible person objects in good faith and in writing, to the chief official of the school, that immunization would violate his or her religious beliefs; or

(2) For whom the school has written certification by a private physician, his or her representative, or the public health authorities that immunization is medically inadvisable.

(Sept. 28, 1979, D.C. Law 3-20, § 7, 26 DCR 380.)

Section references. — This section is referred to in §§ 38-502 and 38-504.

Prior Codifications. — 1981 Ed., § 31-506.
1973 Ed., § 31-2206.

Legislative history of Law 3-20. — For legislative history of D.C. Law 3-20, see Historical and Statutory Notes following § 38-501.

§ 38-507. Immunization plan; suspension of chapter.

In order to implement the requirements of this chapter efficiently, the public health authorities may develop a plan under which immunization may be made available to students according to groups defined alphabetically, geographically, or by age or grade or otherwise, and upon application of the public health authorities or the Superintendent of Schools, the Mayor may suspend for no longer than one year the application of this chapter to those groups of students to whom immunization under such a plan will not be made available soon enough to avoid barring them from admission to school.

(Sept. 28, 1979, D.C. Law 3-20, § 8, 26 DCR 380.)

Prior Codifications. — 1981 Ed., § 31-507. legislative history of D.C. Law 3-20, see Historical and Statutory Notes following § 38-501.
1973 Ed., § 31-2207.

Legislative history of Law 3-20. — For

§ 38-508. Severability.

If any provision of this chapter or its application to any person or circumstance is held to be invalid, the remaining provisions and other applications shall not be affected.

(Sept. 28, 1979, D.C. Law 3-20, § 10, 26 DCR 380.)

Prior Codifications. — 1981 Ed., § 31-508. legislative history of D.C. Law 3-20, see Historical and Statutory Notes following § 38-501.
1973 Ed., § 31-2208.

Legislative history of Law 3-20. — For

CHAPTER 6. STUDENT HEALTH CARE.

Subchapter I. General Provisions

at sponsored athletic events; funding.

Sec.

38-601. Definitions.

38-602. Examination requirements; certificates of health, testing for lead poisoning and dental health.

38-603. Exemption for religious beliefs.

38-604. Notice of noncompliance; attendance unaffected.

38-605. Fee for examination by public health authorities; indigency.

38-606. Duty to obtain treatment.

38-607. Student health files.

38-608. Joint administration by Mayor and Board of Education; rules.

38-609. Protection from liability.

38-610. Reporting and studies of lead poisoning tests.

Subchapter II. Public School Nurses

38-621. Assignment to schools; hours; level of services; nurse or athletic trainer

Subchapter III. Administration of Medication by Public School Employees

38-631 to 38-634. [Repealed].

Subchapter IV. Student Access to Treatment

38-651.01. Definitions.

38-651.02. Possession and self-administration of medication.

38-651.03. Medication action plan.

38-651.04. Medication administration training program.

38-651.05. Administration of medication.

38-651.06. Administration of medication in emergency circumstances.

38-651.07. Posting of emergency response information.

38-651.08. Maintenance of records.

38-651.09. Storage of medication.

38-651.10. Misuse.

38-651.11. Liability.

38-651.12. Rules.

*Subchapter I. General Provisions.***§ 38-601. Definitions.**

For the purposes of this subchapter:

(1) "Adult student" and "minor student" mean those terms as they are defined in § 499 of the Board of Education Rules, effective July 29, 1977 (5 DCMR 2099).

(2) "Certified nurse practitioner" means a registered nurse who is licensed in the United States or its territories, has had postgraduate education and training in pediatrics, adolescent medicine, or the assessment and care of school-aged children, and is certified as a nurse practitioner by the American Nurses' Association, the National Board of Pediatric Nurse Practitioners and Associates, or any other certifying organization acceptable to the Mayor.

(3) "District" means the District of Columbia.

(4) "Physician" means an individual who is licensed to practice medicine in the United States or its territories and has had postgraduate education or training in pediatrics or adolescent medicine.

(Dec. 3, 1985, D.C. Law 6-66, § 2, 32 DCR 6086.)

Section references. — This section is referred to in § 38-1202.06.

Prior Codifications. — 1981 Ed., § 31-2401.

Legislative history of Law 6-66. — Law 6-66, "Student Health Care Act of 1985," was introduced in Council and assigned Bill No. 6-135, which was referred to the Committee on

Education and reassigned to the Committee on Human Services. The Bill was adopted on first and second readings on September 10, 1985, and September 24, 1985, respectively. Signed by the Mayor on October 9, 1985, it was assigned Act No. 6-89 and transmitted to both Houses of Congress for its review.

Short title. — Short title: The first section of

D.C. Law 6-66 provided: "That this act may be cited as the 'Student Health Care Act of 1985'."

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 6-66, the "Student Health Care Act of 1985", see Mayor's Order 2004-102, June 14, 2004 (51 DCR 6669).

Editor's notes. — Because of the codification of D.C. Law 7-45 as subchapter II of this chapter, and the designation of the preexisting text of this chapter as subchapter I, "subchapter" has been substituted for "chapter" in the introductory language.

§ 38-602. Examination requirements; certificates of health, testing for lead poisoning and dental health.

(a) Except as provided in § 38-603, each student attending prekindergarten through grade 12 in a public, public charter, private, or independent school in the District of Columbia shall furnish the school annually with a certificate of health completed and signed by a physician or advanced practice nurse who has examined the student during the 12-month period immediately preceding the 1st day of the school year or the date of the student's enrollment in the school, whichever occurs later. The examination shall cover all items required by the certificate of health form for the student's particular age group.

(a-1) Upon entry of a student under 6 years of age into a licensed day care center, Head Start or similar early childhood program, pre-kindergarten, kindergarten or first grade in a public or private school in the District, the student shall furnish the school with a certificate of testing for lead poisoning.

(b) The Mayor shall establish requirements for periodic testing for lead poisoning and dental examinations. The Mayor shall also establish requirements for the submission of certificates of testing for lead poisoning for the students subject to the provisions of subsection (a-1) of this section, and submission of certificates of dental health for elementary and secondary school students.

(c) The Mayor shall develop standard forms for certificates of health, testing for lead poisoning, and dental health, and shall make blank forms available in sufficient quantities to carry out the purposes of this subchapter. The certificate of health form shall contain, at a minimum, the following:

(1) All items required by the American Academy of Pediatrics for each relevant age group; and

(2) A plain language explanation of the following:

(A) Body mass index;

(B) How to access health insurance programs; and

(C) How to contact school nurses.

(d) Except as provided in § 38-603, the Mayor may require that prekindergarten, elementary, and secondary school students who participate in special programs or have been exposed to certain hazards meet examination requirements in addition to those established by this subchapter.

(Dec. 3, 1985, D.C. Law 6-66, § 3, 32 DCR 6086; Oct. 15, 1993, D.C. Law 10-29, § 2(a)-(c), 40 DCR 5752; July 27, 2010, D.C. Law 18-209, § 605, 57 DCR 4779.)

Prior Codifications. — 1981 Ed., § 31-2402.

Effect of amendments. — D.C. Law 18-209 rewrote subsecs. (a) and (c).

Legislative history of Law 6-66. — For legislative history of D.C. Law 6-66, see Historical and Statutory Notes following § 38-601.

Legislative history of Law 10-29. — For

legislative history of D.C. Law 10-29, see Historical and Statutory Notes following § 38-601.

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-453.

§ 38-603. Exemption for religious beliefs.

Certificates of health, testing for lead poisoning and dental health shall not be required under this subchapter, and no physical, lead poisoning or dental examination shall be required by the Mayor, if a minor student's parent or guardian or an adult student submits in good faith a written notarized statement to the principal or other appropriate school official affirming that the examination(s) in question would violate the established tenets and practices of the parent's, guardian's or student's church or religious denomination.

(Dec. 3, 1985, D.C. Law 6-66, § 4, 32 DCR 6086; Oct. 15, 1993, D.C. Law 10-29, § 2(d), 40 DCR 5752.)

Section references. — This section is referred to in § 38-602.

Prior Codifications. — 1981 Ed., § 31-2403.

Legislative history of Law 6-66. — For

legislative history of D.C. Law 6-66, see Historical and Statutory Notes following § 38-601.

Legislative history of Law 10-29. — For legislative history of D.C. Law 10-29, see Historical and Statutory Notes following § 38-601.

§ 38-604. Notice of noncompliance; attendance unaffected.

(a) No student shall be excluded from school on account of his or her failure to furnish a required certificate of health, testing for lead poisoning or dental health. If a certificate of health, testing for lead poisoning or dental health is not furnished when required, the principal or other appropriate school official shall give both oral and written notice to a minor student's parent(s) or guardian or an adult student that submission of the certificate is required by law. The notice shall explain how to contact the public health authorities for the purpose of having the student examined if private health care is not available or desired. If after 30 calendar days the student has still not furnished the required certificate of health, testing for lead poisoning or dental health, the principal or other appropriate school official shall inquire into whether the student has had an examination. If the student has not been given an examination and none is scheduled, the principal or other appropriate school official shall notify the public health authorities, who shall make prompt and, if necessary, continuing efforts to secure the consent of the parent(s), guardian, or adult student so that the student may as soon as possible be given the required examination(s) either in a public health facility or at school.

(b) Notwithstanding the provisions in subsection (a) of this section, any parent or guardian who, without good cause, fails to comply with the provisions of this subchapter or any rule issued pursuant to § 38-608 shall, at the discretion of the Mayor, be subject to a fine not to exceed \$100 per school year.

(Dec. 3, 1985, D.C. Law 6-66, § 5, 32 DCR 6086; Oct. 15, 1993, D.C. Law 10-29, § 2(e), 40 DCR 5752.)

Prior Codifications. — 1981 Ed., § 31-2404.

Legislative history of Law 6-66. — For legislative history of D.C. Law 6-66, see Historical and Statutory Notes following § 38-601.

Legislative history of Law 10-29. — For legislative history of D.C. Law 10-29, see Historical and Statutory Notes following § 38-601.

§ 38-605. Fee for examination by public health authorities; indigency.

A fee, based on rates to be established by the Mayor, shall be charged to a minor student's parent(s) or guardian or an adult student when the student has been examined by public health authorities pursuant to this subchapter and the parent(s), guardian, or adult student is not indigent. The Mayor shall define "indigency" under this section and may establish a sliding scale of partial payment based on the parents', guardian's, or adult student's reasonable ability to pay some of the examination costs. Under no circumstances shall a student be excluded from school pending the payment of a fee imposed under this section.

(Dec. 3, 1985, D.C. Law 6-66, § 6, 32 DCR 6086.)

Section references. — This section is referred to in § 38-606.

Prior Codifications. — 1981 Ed., § 31-2405.

Legislative history of Law 6-66. — For legislative history of D.C. Law 6-66, see Historical and Statutory Notes following § 38-601.

§ 38-606. Duty to obtain treatment.

If a student is excluded from school pursuant to subchapter II of Chapter 1 of Title 7, it shall be his or her responsibility if an adult student, and the responsibility of his or her parent(s) or guardian if a minor student, to obtain any treatment necessary for him or her to resume attendance at school. If private health care is not available or desired, the Mayor shall ensure that the necessary treatment is made available by public health authorities after obtaining the consent of the parent(s), guardian, adult student, or, when authorized by District law, minor student. Fees shall be determined in the same manner as provided in § 38-605.

(Dec. 3, 1985, D.C. Law 6-66, § 7, 32 DCR 6086.)

Prior Codifications. — 1981 Ed., § 31-2406.

Legislative history of Law 6-66. — For

legislative history of D.C. Law 6-66, see Historical and Statutory Notes following § 38-601.

§ 38-607. Student health files.

(a) The Board of Education, with respect to public school students, and the Mayor, with respect to private school students, shall establish uniform procedures requiring elementary and secondary schools in the District to maintain health files for each student. Each student's health file shall contain all health-related documents submitted by or on behalf of the student.

(b) A student's health file and all certificates of health and dental health

furnished pursuant to this subchapter shall be confidential and subject to inspection, disclosure, and use only as provided by applicable District and federal law.

(Dec. 3, 1985, D.C. Law 6-66, § 8, 32 DCR 6086.)

Prior Codifications. — 1981 Ed., § 31-2407. legislative history of D.C. Law 6-66, see Historical and Statutory Notes following § 38-601.

Legislative history of Law 6-66. — For

§ 38-608. Joint administration by Mayor and Board of Education; rules.

The Mayor and the Board of Education shall jointly administer this subchapter and each shall issue rules pursuant to subchapter I of Chapter 5 of Title 2, to carry out its purposes.

(Dec. 3, 1985, D.C. Law 6-66, § 9, 32 DCR 6086.)

Section references. — This section is referred to in § 38-604.

Prior Codifications. — 1981 Ed., § 31-2408.

Legislative history of Law 6-66. — For legislative history of D.C. Law 6-66, see Historical and Statutory Notes following § 38-601.

§ 38-609. Protection from liability.

Neither the District government or its agencies, officials, and employees nor any private school or its officials and employees shall be subject to civil or criminal liability for failing to recognize or communicate a need for treatment from information contained in a student's health file, or to obtain treatment for a student solely on account of such information.

(Dec. 3, 1985, D.C. Law 6-66, § 10, 32 DCR 6086.)

Prior Codifications. — 1981 Ed., § 31-2409.

Legislative history of Law 6-66. — For

legislative history of D.C. Law 6-66, see Historical and Statutory Notes following § 38-601.

§ 38-610. Reporting and studies of lead poisoning tests.

(a) The Mayor shall establish requirements for the mandatory reporting of all lead poisoning tests conducted in the District of Columbia.

(b) The Mayor shall use the data collected in subsection (a) of this section to conduct an epidemiological study for the purpose of preventing future lead poisoning. The Mayor shall submit the study to the Council of the District of Columbia within 2 years from October 15, 1993.

(Dec. 3, 1985, D.C. Law 6-66, § 10a, as added Oct. 15, 1993, D.C. Law 10-29, § 2(f), 40 DCR 5752.)

Prior Codifications. — 1981 Ed., § 31-2410.

Legislative history of Law 10-29. — D.C. Law 10-29, the "Student Health Care Amend-

ment Act of 1993," was introduced in Council and assigned Bill No. 10-54, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second read-

ings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-61 and trans-

mitted to both Houses of Congress for its review. D.C. Law 10-29 became effective on October 15, 1993.

Subchapter II. Public School Nurses.

§ 38-621. Assignment to schools; hours; level of services; nurse or athletic trainer at sponsored athletic events; funding.

(a) A registered nurse shall be assigned to each District of Columbia ("District") elementary and secondary public and public charter school a minimum of 12 hours per week during each semester and during summer school if a summer school program is operated.

(b)(1) The minimum hours per week of registered nurse services at each school shall increase from 12 to 16 hours per week beginning 1 year after December 10, 1987. The minimum hours per week of registered nurse services at each school shall increase from 16 to 20 hours per week beginning 2 years after December 10, 1987.

(2) Licensed practical nurses may be used to supplement the registered nurse work force in meeting the required 20 hours per week minimum registered nurse services at each elementary and middle school. The licensed practical nurses shall perform their duties under the appropriate supervision and in general collaboration with the registered nurses.

(c) Any school that, on May 1, 1987, exceeded the standards for registered nurse services prescribed by subsection (a) or (b) of this section shall continue that level of service, or the level prescribed by subsection (a) or (b) of this section, whichever is greater. No reduction shall be made in the level of registered nurse services at any school except in response to a reduced need based on a reduced student enrollment or a reduced proportion of students requiring special services because of handicapping conditions.

(d) Appropriate medical coverage, as defined in rules issued by the Board of Education in accordance with subchapter I of Chapter 5 of Title 2, and in consultation with the Director, Department of Health, shall be provided by the Board of Education at any interscholastic athletic event if the event is sponsored by a District public school, occurs in the District, and is identified as requiring medical coverage by rule. This medical coverage may include, but is not limited to:

- (1) A licensed medical doctor;
- (2) A registered nurse;
- (3) A certified athletic trainer;
- (4) An emergency medical technician ("EMT") or paramedic;
- (5) A certified prehospital care provider (as determined by the Director, Department of Health); or

(6) An adult trained by the Red Cross with current certification in cardiopulmonary resuscitation ("CPR"), first aid, or life-saving.

(e)(1) Appropriate medical coverage shall be consistent with the risk of injury involved in the interscholastic athletic event. The medical personnel

that shall be present at an interscholastic athletic event that occurs in the District and that is sponsored by a District secondary public school shall be detailed as follows:

(A) For varsity football, a licensed medical doctor and for non-varsity football, a licensed medical doctor or certified athletic trainer;

(B) For basketball, wrestling, soccer, indoor or outdoor track and field events, or cross-country, at least 1 licensed doctor, certified athletic trainer, registered nurse, EMT or paramedic, or any other certified prehospital care provider, as determined by the Director, Department of Health;

(C) For volleyball, baseball, softball, or swimming, at least 1 licensed medical doctor, certified athletic trainer, registered nurse, EMT or paramedic, any other certified prehospital care provider, as determined by the Director, Department of Health, or adult trained by the American Red Cross with current certification in CPR, first aid, or life-saving;

(D) For tennis or golf, medical personnel coverage shall be optional as financial resources allow; and

(E) For any other sport, the appropriate level of medical personnel coverage, commensurate with the risk of injury involved, shall be set by the Superintendent of Schools of the District of Columbia, in consultation with the Director, Department of Health, and approved by the Board of Education; and

(2) The medical personnel coverage services shall be in addition to the minimum hours of registered nurse services required by subsection (a) or (b) of this section.

(f) Sufficient funds to carry out the requirements of this section shall be appropriated out of the general revenues of the District.

(g) Beginning with the fiscal year 1991, the responsibility for implementation of this act shall be transferred from the Department of Human Services to the Board of Education.

(Dec. 10, 1987, D.C. Law 7-45, § 2, 34 DCR 6845; July 25, 1990, D.C. Law 8-149, § 2, 37 DCR 3717; Aug. 17, 1991, D.C. Law 9-29, § 2, 38 DCR 4213; Mar. 20, 1998, D.C. Law 12-60, § 401, 44 DCR 7378; Apr. 13, 1999, D.C. Law 12-224, § 2, 46 DCR 483; Apr. 13, 2005, D.C. Law 15-353, § 602, 52 DCR 2331.)

Prior Codifications. — 1981 Ed., § 31-2421.

Effect of amendments. — D.C. Law 15-353, in subsec. (a), inserted “and public charter” following “public”.

Temporary Amendment of Section. — D.C. Law 12-59 substituted “Director, Department of Health” for “Commissioner of Public Health” in the introductory language of (d) and in (d)(5), (e)(1)(B), (e)(1)(C), and (e)(1)(E).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-182 in (e)(1)(A), inserted “varsity,” and added “and for non-varsity football, a licensed medical doctor or certified athletic trainer.”

Section 4(b) of D.C. Law 12-182 provided that the act shall expire after 225 days of its having taken effect.

Section 602 of D.C. Law 14-164, in subsec. (a), inserted “and public charter” following “public”.

Section 1101(b) of D.C. Law 14-164 provided that the act shall expire after 225 days of its having taken effect.

Section 602 of D.C. Law 15-2 amended subsec. (a) by inserting “and public charter” after “public”.

Section 1101 (b) of D.C. Law 15-2 provided that the act shall expire after 225 days of its having taken effect.

Section 602 of D.C. Law 15-117, in subsec. (a), inserted “and public charter” after “public”.

Section 1101(b) of D.C. Law 15-117 provided that the act shall expire after 225 days of its having taken effect.

Section 602 of D.C. Law 15-319, in subsec. (a), substituted "public and public charter" for "public."

Section 901(b) of D.C. Law 15-319 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 401 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 401 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2 of the Public School Nurse Assignment Emergency Amendment Act of 1998 (D.C. Act 12-448, September 18, 1998, 45 DCR 6665), and § 2 of the Public School Nurse Assignment Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-555, December 30, 1998, 45 DCR 570).

For temporary (90 day) amendment of section, see § 602 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) amendment of section, see § 602 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) amendment of section, see § 602 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) amendment of section, see § 602 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) amendment of section, see § 602 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) amendment of section, see § 602 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) amendment of section, see § 602 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 7-45. — Law 7-45, "District of Columbia Public School Nurse Assignment Act of 1987," was introduced in

Council and assigned Bill No. 7-47, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 14, 1987, and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-78 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-130. — Law 8-130 was introduced in Council and assigned Bill No. 8-528. The Bill was adopted on first and second readings on February 27, 1990, and March 13, 1990, respectively. Signed by the Mayor on March 27, 1990, it was assigned Act No. 8-182 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-149. — Law 8-149 was introduced in Council and assigned Bill No. 8-511, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 1, 1990, and May 15, 1990, respectively. Signed by the Mayor on May 30, 1990, it was assigned Act No. 8-207 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-19. — Law 9-19 was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-29. — Law 9-29 was introduced in Council and assigned Bill No. 9-160, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 2, 1991, it was assigned Act No. 9-56 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 38-918.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 38-918.

Legislative history of Law 12-182. — Law 12-182, the "Public School Nurse Assignment Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-739. The Bill was adopted on first and second readings on July 30, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 1, 1998, it was assigned Act No. 12-453 and transmitted to both Houses of Congress for its review. D.C. Law 12-182 became effective on March 26, 1999.

Legislative history of Law 12-224. — Law 12-224, the "Public School Nurse Assignment Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-722, which

was referred to the Committee on Education, Libraries, and Recreation. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 11, 1998, it was assigned Act No. 12-542 and transmitted to both Houses of Congress for its review. D.C. Law 12-224 became effective on April 13, 1999.

Legislative history of Law 14-164. — Law 14-164, the “Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-577, which was retained by Council. The Bill was adopted on first and second readings on March 5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 24, 2002, it was assigned Act No. 14-332 and transmitted to both Houses of Congress for its review. D.C. Law 14-164 became effective on June 25, 2002.

Legislative history of Law 15-2. — Law 15-2, the “Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-28, and was retained by Council. The Bill was adopted on first and second readings on January 7, 2003, and February 4, 2003, respectively. Signed by the Mayor on February 24, 2003, it was assigned Act No. 15-20 and transmitted to both Houses of Congress for its review. D.C. Law 15-2 became effective on May 3, 2003.

Legislative history of Law 15-117. — Law 15-117, the “Child and Youth, Safety and Health Omnibus Temporary Amendment Act of

2004”, was introduced in Council and assigned Bill No. 15-589, and was retained by Council. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 27, 2004, it was assigned Act No. 15-304 and transmitted to both Houses of Congress for its review. D.C. Law 15-117 became effective on March 30, 2004.

Legislative history of Law 15-319. — Law 15-319, the “Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-1117, and was retained by Council. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-716 and transmitted to both Houses of Congress for its review. D.C. Law 15-319 became effective on April 8, 2005.

Legislative history of Law 15-353. — Law 15-353, the “Child and Youth, Safety and Health Omnibus Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-607 which was referred to the Committees on Human Services, Finance and Revenue, and Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-759 and transmitted to both Houses of Congress for its review. D.C. Law 15-353 became effective on April 13, 2005.

References in text. — “This act” referred to in (g) is D.C. Law 8-149.

CASE NOTES

ANALYSIS

Civil rights actions.
Rights of action.

Civil rights actions.

Parents of school children could not bring § 1983 action alleging deprivation of constitutional rights arising out of nonenforcement of statute calling for registered nurses to be present at schools for specified number of hours per week, and requiring that nurses or trainers be available at school athletic events; assuming that children had constitutional right to nurse attendance, they had not been deprived of such right without due process, as there was private right of action available under statute in question. 42 U.S.C. § 1983; D.C. Code 1981, § 31-2421. *Kelly v. Parents United*, 641 A.2d 159, 1994 D.C. App. LEXIS 60 (1994).

Parents who had prevailed in lawsuit to compel district to enforce statute setting forth minimum hours that school nurse was required

to be present on premises, and requiring nurse or trainer to be present at athletic events, was not entitled to attorneys fees under § 1988; such fees were available only with respect to an action brought under § 1983, and as parents' had right of action under statute imposing nurse attendance requirements, § 1983 was not applicable. 42 U.S.C. § 1983; 42 U.S.C. (1988 Ed.) § 1988; D.C. Code 1981, § 31-2421. *Kelly v. Parents United*, 641 A.2d 159, 1994 D.C. App. LEXIS 60 (1994).

Rights of action.

Parents of children registered in schools could bring action against district to enforce statute requiring that registered school nurses be available on school premises for specified number of hours per week, and also that they (or trainers) be available at school athletic events; parents were part of class intended to be benefitted by statute, there was no enforcement mechanism provided, and granting private right of action would be consistent with

underlying purposes of legislative scheme. D.C. Code 1981, § 31-2421(a-c). *Kelly v. Parents United*, 641 A.2d 159, 1994 D.C. App. LEXIS 60 (1994).

Subchapter III. Administration of Medication by Public School Employees.

§§ 38-631 to 38-634. Definitions; administration of medication by a public school employee; requirements for the licensed practitioner; rules [Repealed].

Repealed.

(Oct. 5, 1993, D.C. Law 10-55, § 2, 40 DCR 7219; Feb. 2, 2008, D.C. Law 17-107, § 14, 54 DCR 12230.)

Prior Codifications. — 1981 Ed., § 31-2431.

Legislative history of Law 10-55. — D.C. Law 10-55, the “Administration of Medication by Public School Employees Act of 1993,” was introduced in Council and assigned Bill No. 10-14, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on July 13, 1993, and September 21, 1993, respectively. Signed by the Mayor on October 1, 1993, it was assigned Act No. 10-108 and transmitted to both Houses of Congress for its review. D.C. Law 10-55 became effective on November 20, 1993.

Legislative history of Law 11-21. — Law 11-21, the “Administration of Medication by Public School Employees Amendment Act of 1995,” was introduced in Council and assigned

Bill No. 11-45, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on March 7, 1995, and April 4, 1995, respectively. Signed by the Mayor on April 17, 1995, it was assigned Act No. 11-40 and transmitted to both Houses of Congress for its review. D.C. Law 11-21 became effective on June 17, 1995.

Legislative history of Law 17-107. — Law 17-107, the “Student Access to Treatment Act of 2007,” was introduced in Council and assigned Bill No. 17-134 which was referred to the Committee on Health. The Bill was adopted on first reading on October 23, 2007. Signed by the Mayor on December 3, 2007, it was assigned Act No. 17-226 and transmitted to both Houses of Congress for its review. D.C. Law 17-107 became effective on February 2, 2008.

Subchapter IV. Student Access to Treatment.

§ 38-651.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Emergency circumstances” means reasonably apparent circumstances that indicate that any delay in treatment would endanger the health or life of the student.

(2) “Medication” means any prescription or non-prescription drug used to treat conditions and illnesses covered by this subchapter.

(3) “Medication action plan” means a written medical treatment plan for an individual student that is developed and submitted to a school in accordance with § 38-651.03.

(4) “Responsible person” means, in the case of a student under 18 years of age, a parent, legal guardian, legal custodian, foster parent, or other adult charged with the ongoing care and supervision of the student, and, in the case of a student 18 years of age or older, the student himself or herself.

(5) “School” means:

(A) Any public school operated under the authority of the Mayor of the District of Columbia; and

(B) Any charter school, parochial school, or private school in the District.

(Feb. 2, 2008, D.C. Law 17-107, § 2, 54 DCR 12230.)

Temporary Addition of Section. — Section 2 of Law 17-52 added a section to read as follows:

“Sec. 2. Definitions.

“For the purposes of this act, the term:

“(1) ‘Medication action plan’ means a written medical treatment plan for an individual student with prescription medication that is developed and submitted to a school in accordance with section 4.

“(2) ‘Responsible person’ means, in the case of a student under 18 years of age, a parent, legal guardian, legal custodian, foster parent, or other adult charged with the ongoing care and supervision of the student, and in the case of a student 18 years of age or older, the student himself or herself.

“(3) ‘School’ means:

“(A) Any public school operated under the authority of the Mayor of the District of Columbia; and

“(B) Any charter school, parochial school, or private school in the District.”

Section 11(b) of D.C. Law 17-52 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2 of Student Access to Treatment Emergency Amendment Act of 2007 (D.C. Act 17-82, July 26,

Legislative history of Law 17-107. — Law 17-107, the “Student Access to Treatment Act of 2007”, was introduced in Council and assigned Bill No. 17-134 which was referred to the Committee on Health. The Bill was adopted on first reading on October 23, 2007. Signed by the Mayor on December 3, 2007, it was assigned Act No. 17-226 and transmitted to both Houses of Congress for its review. D.C. Law 17-107 became effective on February 2, 2008.

§ 38-651.02. Possession and self-administration of medication.

A student may possess and self-administer medication at the school in which the student is currently enrolled, at school-sponsored activities, and while on school-sponsored transportation, in order to treat asthma, anaphylaxis, or other illness; provided, that:

(1) The responsible person has submitted a valid medication action plan to the school; and

(2) All other conditions set forth in this subchapter are met.

(Feb. 2, 2008, D.C. Law 17-107, § 3, 54 DCR 12230.)

Temporary Addition of Section. — Section 3 of Law 17-52 added a section to read as follows:

“Sec. 3. Possession and self-administration of medication.

“A student may possess and self-administer medication at the school in which the student is currently enrolled, at school-sponsored activities, and while on school-sponsored transportation, to treat asthma, anaphylaxis, or other potentially life-threatening illness; provided, that:

“(1) The responsible person has submitted a valid medication action plan to the school; and

“(2) All other conditions set forth in this act,

or in rules promulgated pursuant to this act, are met.”

Section 11(b) of D.C. Law 17-52 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 3 of Student Access to Treatment Emergency Amendment Act of 2007 (D.C. Act 17-82, July 26, 2007, 54 DCR 7999).

For temporary (90 day) addition, see § 3 of Student Access to Treatment Congressional Review Emergency Act of 2007 (D.C. Act 17-140, October 17, 2007, 54 DCR 10736).

Legislative history of Law 17-107. — For Law 17-107, see notes following § 38-651.01.

§ 38-651.03. Medication action plan.

(a) A valid medication action plan shall include:

(1) Written medical authorization, signed by a licensed health practitioner, that states:

- (A) The name of the student;
- (B) Emergency contact information for the responsible person;
- (C) Contact information for the licensed health practitioner;
- (D) The name, purpose, and prescribed dosage of the medication;
- (E) The frequency that the medication is to be administered;
- (F) The possible side effects of the medication as listed on the label;
- (G) Special instructions or emergency procedures; and

(H) In the case of self-administered medication, confirmation that the student has been instructed in the proper technique for self-administration of the medication and has demonstrated the ability to self-administer the medication effectively.

(2) Written authorization, signed by the responsible person, that states:

(A) A trained employee or agent of the school may administer medication to the student in accordance with rules established by the Mayor; or

(B) In the case of self-administration, the student may possess and self-administer the medication at the school in which the student is currently enrolled, at school-sponsored activities, and while on school-sponsored transportation; and

(C) The name of the student may be distributed to appropriate school staff, as determined by the principal; and

(3) Written acknowledgment that the District, a school, or an employee or agent of a school shall be immune from civil liability for the good-faith performance of responsibilities under this subchapter; except, that no immunity shall extend to criminal acts, intentional wrongdoing, gross negligence, or wanton or willful misconduct.

(b) Immediately following any changes regarding the health or treatment of the student, the responsible person shall submit to the school an amended medication action plan.

(c) The medication action plan shall be updated at least annually, in accordance with a schedule determined by the Mayor.

(Feb. 2, 2008, D.C. Law 17-107, § 4, 54 DCR 12230.)

Temporary Addition of Section. — Section 4 of Law 17-52 added a section to read as follows:

“Sec. 4. Medication action plan.

“(a) No student shall possess or self-administer medication at the school in which the student is currently enrolled, at school-sponsored activities, or while on school-sponsored transportation, unless the school has a valid medication action plan for that student.

“(b) A valid medication action plan shall include:

“(1) Written medical authorization, signed by the student’s health practitioner, that states:

- “(A) The name of the student;
- “(B) Emergency contact information for the responsible person;
- “(C) Contact information for the health practitioner;
- “(D) The name, purpose, and prescribed dosage of the medication;
- “(E) The frequency that the medication is to be administered;
- “(F) The possible side effects of the medication;
- “(G) Special instructions or emergency procedures; and
- “(H) In the case of self-administered medica-

tion, confirmation that the student has been instructed in the proper technique for self-administration of the medication and has demonstrated the ability to self-administer the medication effectively;

“(2) Written authorization, signed by the responsible person, that states:

“(A) A trained school employee may administer medication to the student in accordance with rules established by the Mayor; or

“(B) In the case of self-administration, the student may possess and self-administer the medication at the school in which the student is currently enrolled, at school-sponsored activities, and while on school-sponsored transportation; and

“(3) Written acknowledgment that the school and its employees shall incur no liability and that the responsible person shall indemnify and hold harmless the school and its employees against any claims that may arise relating to the administration, general supervision, train-

ing, administration, or self-administration of the authorized medication.

“(c) Within 30 days of any changes in the student's health that affect the medication action plan, the responsible person shall revise the medication action plan and submit the amended plan to the school.

“(d) The medication action plan shall be updated at least annually, in accordance with a schedule determined by the Mayor.

“(e) A school may deny a medication action plan, pursuant to terms established by the Mayor.”

Section 11(b) of D.C. Law 17-52 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 4 of Student Access to Treatment Emergency Amendment Act of 2007 (D.C. Act 17-82, July 26,

Legislative history of Law 17-107. — For Law 17-107, see notes following § 38-651.01.

§ 38-651.04. Medication administration training program.

(a) By July 1, 2008, the Mayor shall develop and implement a medication administration training program, which shall provide training and certification of employees and agents of a school to:

(1) Administer medication to students with valid medication action plans who are not authorized to possess that medication or are not competent to self-administer the medication; and

(2) Administer medication in emergency circumstances to any student suffering an acute episode of asthma, anaphylaxis, or other illness.

(b) All training provided pursuant to subsection (a) of this section shall be conducted by a health-care professional licensed in the District of Columbia.

(c) A health-care professional shall provide a school with written certification of successful completion of the training for each employee or agent of the school. The certification shall be valid for 3 years.

(Feb. 2, 2008, D.C. Law 17-107, § 5, 54 DCR 12230.)

Legislative history of Law 17-107. — For Law 17-107, see notes following § 38-651.01.

Delegation of Authority. — Delegation of

Authority to the Student Access to Treatment Act of 2007, see Mayor's Order 2008-85, June 11, 2008 (55 DCR 9362).

§ 38-651.05. Administration of medication.

An employee or agent trained and certified pursuant to § 38-651.04 may administer medication to a student with a valid medication action plan; provided, that:

(1) The responsible person has delivered the medication to be administered to the school;

(2) The employee or agent is under the general supervision of licensed health practitioner; and

(3) Except in emergency circumstances, the responsible person has administered the initial dose of a new medication.

(Feb. 2, 2008, D.C. Law 17-107, § 6, 54 DCR 12230.)

Legislative history of Law 17-107. — For Law 17-107, see notes following § 38-651.01.

§ 38-651.06. Administration of medication in emergency circumstances.

(a) No employee or agent of a school shall administer medication in emergency circumstances to any student unless he or she has been trained and certified pursuant to § 38-651.04.

(b) The Mayor shall obtain a standing order signed by at least one practicing physician licensed in the District that identifies the specific medications that may be administered in emergency circumstances and provides appropriate administration instructions.

(c) A student need not have a known diagnosis or a medication action plan to receive treatment in emergency circumstances from a trained employee or agent of the school.

(d) The Mayor shall develop a procedure by which the responsible person may request that a minor student not receive treatment in emergency circumstances.

(Feb. 2, 2008, D.C. Law 17-107, § 7, 54 DCR 12230.)

Legislative history of Law 17-107. — For Authority to the Student Access to Treatment Act of 2007, see Mayor's Order 2008-85, June 11, 2008 (55 DCR 9362).
Delegation of Authority. — Delegation of

§ 38-651.07. Posting of emergency response information.

By July 1, 2008, the Mayor shall develop a standardized form for posting emergency response information. The information shall be posted in all schools and shall include:

(1) An explanation of the symptoms and possible consequences of conditions covered by this subchapter;

(2) The names of all the employees or agents of the particular school who are trained and certified to administer medication in emergency circumstances; and

(3) The emergency response steps, as identified by the Mayor, to be taken by the school.

(Feb. 2, 2008, D.C. Law 17-107, § 8, 54 DCR 12230.)

Legislative history of Law 17-107. — For Authority to the Student Access to Treatment Act of 2007, see Mayor's Order 2008-85, June 11, 2008 (55 DCR 9362).
Delegation of Authority. — Delegation of

§ 38-651.08. Maintenance of records.

(a) A school shall keep the medication action plans in the school health suite or other designated, easily accessible location.

(b) A school shall create and maintain a list of students with valid medication action plans, including the emergency contact information for each student. The principal of the school may distribute the list among appropriate employees or agents of the school.

(c) A school shall maintain accurate records of all its employees and agents who are certified to administer medication.

(d) A school shall maintain accurate records of all incidents where medication was administered to a student in an emergency circumstance.

(Feb. 2, 2008, D.C. Law 17-107, § 9, 54 DCR 12230.)

Temporary Addition of Section. — Section 5 of Law 17-52 added a section to read as follows:

“Sec. 5. Maintenance of records.

“(a) A school shall keep the medication action plan in the school health suite, or other designated, easily accessible location.

“(b) A school shall create and maintain a list of students with valid medication action plans, including the emergency contact information for each student. The principal of the school may distribute this list among appropriate school employees.

“(c) Each school that has a student with a medication action plan for self-administration may schedule a meeting at the beginning of the school year with the school nurse, the principal, the student, the responsible person, and any

other appropriate school staff to review the student's medication action plan. Authorization to possess and self-administer previously approved medication shall not be dependent on having had this meeting.”

Section 11(b) of D.C. Law 17-52 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 5 of Student Access to Treatment Emergency Amendment Act of 2007 (D.C. Act 17-82, July 26, 2007, 54 DCR 7999).

For temporary (90 day) addition, see § 5 of Student Access to Treatment Congressional Review Emergency Act of 2007 (D.C. Act 17-140, October 17, 2007, 54 DCR 10736).

Legislative history of Law 17-107. — For Law 17-107, see notes following § 38-651.01.

§ 38-651.09. Storage of medication.

(a) A school may procure medication for the treatment of asthma, anaphylaxis, or other illness for use in emergency circumstances. The medication shall be properly stored and maintained in an easily accessible location.

(b)(1) A school may receive medication to store for the treatment of asthma, anaphylaxis, or other illness from the responsible person for a student with a valid medication action plan.

(2) The medication shall be:

(A) Properly stored at the school in a location to which the student has immediate access in case of an emergency; and

(B) Labeled with the:

(i) Name of the student;

(ii) Name of the medication;

(iii) Dosage;

(iv) Time of administration; and

(v) Duration of medication.

(3) No school shall be required to store more than a 3-school-day supply of medication for any one student.

(Feb. 2, 2008, D.C. Law 17-107, § 10, 54 DCR 12230.)

Temporary Addition of Section. — Section 6 of Law 17-52 added a section to read as follows:

“Sec. 6. Storage of medication.

“(a) A school may receive additional medication from the responsible person for a student with a valid medication action plan; provided, that no school shall be required to store more than a 30-school-day supply of medication for any one student.

“(b) Additional medication shall be:

“(1) Properly stored at the school in a location to which the student has immediate access in case of an emergency; and

“(2) Labeled with the name of the student and the name of the medication, including the

dosage, the frequency of administration, and the duration of the medication.

Section 11(b) of D.C. Law 17-52 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 6 of Student Access to Treatment Emergency Amendment Act of 2007 (D.C. Act 17-82, July 26, 2007, 54 DCR 7999).

For temporary (90 day) addition, see § 6 of Student Access to Treatment Congressional Review Emergency Act of 2007 (D.C. Act 17-140, October 17, 2007, 54 DCR 10736).

Legislative history of Law 17-107. — For Law 17-107, see notes following § 38-651.01.

§ 38-651.10. Misuse.

(a) A school may deny a medication action plan pursuant to terms established by the Mayor.

(b) A student who self-administers medication while at school, at a school-sponsored activity, or while on school-sponsored transportation for a purpose other than his or her own treatment may be subject to disciplinary action by the school; provided, that disciplinary action shall not limit or restrict the access of a student to his or her prescribed medication. The school shall promptly notify the responsible person of any disciplinary action imposed.

(Feb. 2, 2008, D.C. Law 17-107, § 11, 54 DCR 12230.)

Temporary Addition of Section. — Section 7 of Law 17-52 added a section to read as follows:

“Sec. 7. Misuse.

“A student who self-administers medication while at school, at a school-sponsored activity, or while on school-sponsored transportation for a purpose other than his or her own authorized treatment may be subject to disciplinary action by the school; provided, that disciplinary action shall not limit or restrict the access of a student to his or her prescribed medication. The school shall promptly notify the responsible person of any disciplinary action imposed.”

Section 11(b) of D.C. Law 17-52 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 7 of Student Access to Treatment Emergency Amendment Act of 2007 (D.C. Act 17-82, July 26, 2007, 54 DCR 7999).

For temporary (90 day) addition, see § 7 of Student Access to Treatment Congressional Review Emergency Act of 2007 (D.C. Act 17-140, October 17, 2007, 54 DCR 10736).

Legislative history of Law 17-107. — For Law 17-107, see notes following § 38-651.01.

§ 38-651.11. Liability.

The District, a school, or an employee or agent of a school shall be immune from civil liability for the good-faith performance of responsibilities under this subchapter; except, that no immunity shall extend to criminal acts, intentional wrongdoing, gross negligence, or wanton or willful misconduct.

(Feb. 2, 2008, D.C. Law 17-107, § 12, 54 DCR 12230.)

Temporary Addition of Section. — Section 8 of Law 17-52 added a section to read as follows:

“Sec. 8. Liability waiver.

“(a) No school nor any employee or agent of a school shall be held liable for the good-faith performance of responsibilities under this act.

“(b) Except as provided in subsection (a) of this section, nothing in this act shall be interpreted to create a cause of action or to increase or diminish the liability of any person.”

Section 11(b) of D.C. Law 17-52 provided that

the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 8 of Student Access to Treatment Emergency Amendment Act of 2007 (D.C. Act 17-82, July 26, 2007, 54 DCR 7999).

For temporary (90 day) addition, see § 8 of Student Access to Treatment Congressional Review Emergency Act of 2007 (D.C. Act 17-140, October 17, 2007, 54 DCR 10736).

Legislative history of Law 17-107. — For Law 17-107, see notes following § 38-651.01.

§ 38-651.12. Rules.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this subchapter.

(b) The Mayor may establish, by regulation, additional types of medication that a student may self-administer and other illnesses for which a student may self-administer medication other than those provided in this subchapter.

(c) All existing rules and regulations promulgated pursuant to subchapter III of this chapter [§ 38-631 et seq.] [repealed], shall remain in effect until rules promulgated pursuant to this subchapter become effective.

(Feb. 2, 2008, D.C. Law 17-107, § 13, 54 DCR 12230.)

Temporary Addition of Section. — Section 9 of Law 17-52 added a section to read as follows:

“Sec. 9. Rules.

“(a) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this act.

“(b) The Mayor may establish, by regulation, additional types of medication a student may self-administer and potentially life-threatening illnesses for which a student may self-administer medication other than those provided in this act.”

Section 11(b) of D.C. Law 17-52 provided that

the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 9 of Student Access to Treatment Emergency Amendment Act of 2007 (D.C. Act 17-82, July 26, 2007, 54 DCR 7999).

For temporary (90 day) addition, see § 9 of Student Access to Treatment Congressional Review Emergency Act of 2007 (D.C. Act 17-140, October 17, 2007, 54 DCR 10736).

Legislative history of Law 17-107. — For Law 17-107, see notes following § 38-651.01.

Delegation of Authority. — Delegation of Authority to the Student Access to Treatment Act of 2007, see Mayor’s Order 2008-85, June 11, 2008 (55 DCR 9362).

CHAPTER 7. FREE TEXTBOOKS.

Sec.

38-701. Textbooks and supplies furnished without charge.

38-702. Books remain District property.

38-703. Liability for damaged books.

Sec.

38-704. Limitation on purchases.

38-705. Sale or exchange authorized.

38-706. Expense of textbooks and supplies.

§ 38-701. Textbooks and supplies furnished without charge.

(a) The Board of Education shall issue to each student of the public elementary schools, public junior high schools, and public senior high schools textbooks, workbooks, and adequate instructional materials for each core curriculum subject, free of charge, by the second week of each new semester. The Superintendent shall certify to the Board of Education, within 30 days of each new semester, that each student has been issued textbooks, workbooks, and adequate instructional materials for each core curriculum subject, free of charge.

(b) The Board of Education shall evaluate and certify every 5 years that all textbooks used in the public school system meet the Board of Education's goals and objectives and the curriculum framework established for District of Columbia public schools.

(c) The Board of Education may require a refundable deposit for textbooks issued to students in grades 7 through 12, to offset costs associated with lost or damaged textbooks. If the Board of Education requires a textbook deposit pursuant to this subsection, the Board of Education shall provide for a refund of the deposit at the conclusion of the relevant semester or school year for which the textbook was issued.

(d) The Board of Education shall adopt regulations to implement the provisions of this section.

(Jan. 31, 1930, 46 Stat. 62, ch. 32, § 1; June 28, 2002, D.C. Law 14-170, § 2, 49 DCR 4726.)

Cross references. — School officials profiting from purchase of school supplies, see § 38-902.

Prior Codifications. — 1981 Ed., § 31-701. 1973 Ed., § 31-401.

Effect of amendments. — D.C. Law 14-170 rewrote the section which had read:

"The Board of Education of the District of Columbia shall provide pupils of the public elementary schools, public junior high schools, and public senior high schools of the District of Columbia free of charge with the use of all textbooks and other necessary educational books and supplies."

Temporary Amendment of Section. — Section 2 of D.C. Laws 13-167 rewrote the section to read as follows:

"(a) The Board of Education of the District of Columbia shall issue each student of the public

elementary schools, public junior high schools, and public senior high schools of the District of Columbia textbooks, workbooks, and adequate instructional materials for each core curriculum subject, free of charge, by the second week of each new semester. The Superintendent shall certify to the Council, within 30 days of each new semester, that each student has been issued textbooks, workbooks, and adequate instructional materials for each core curriculum subject, free of charge.

"(b) The Board of Education shall evaluate and certify every 5 years to the Council that all textbooks used in the public school system meet the Board of Education's goals and objectives and the curriculum framework established for the District of Columbia's public schools.

"(c) The Board of Education may require a refundable textbook deposit in grades 7

through 12 to offset costs associated with lost or damaged textbooks. The Board of Education shall provide for refund of any textbook deposit authorized pursuant to this subsection, at the conclusion of the relevant semester or school year for which the textbook was issued. The Board of Education shall adopt regulations to implement the provisions of this section.

“(d) The Public Schools Free Textbook Temporary Amendment Act of 2000 is subject to the availability of appropriated funds, or the Council’s prescription requiring the Superintendent to comply with the law by making funds available within its FY 2001 budget.”

Section 2 of D.C. Laws 13-167 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Public Schools Free Textbook Emergency Amendment Act of 2000 (D.C. Act 13-347, June 5, 2000, 47 DCR 5006).

For temporary (90-day) amendment of section, see § 2 of the Public Schools Free Textbook Legislative Review Emergency Amend-

ment Act of 2000 (D.C. Act 13-429, August 14, 2000, 47 DCR 7456).

For temporary (90-day) amendment of section, see § 2 of the Public Schools Free Textbook Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-458, November 7, 2000, 47 DCR 9432).

For temporary (90 day) amendment of section, see § 2 of Public Schools Free Textbook Emergency Amendment Act of 2001 (D.C. Act 14-58, June 6, 2001, 48 DCR 5695).

Legislative history of Law 14-170. — Law 14-170, the “District of Columbia Public Schools Free Textbook Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-36, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 26, 2001, and April 9, 2002, respectively. Signed by the Mayor on May 3, 2002, it was assigned Act No. 14-361 and transmitted to both Houses of Congress for its review. D.C. Law 14-170 became effective on June 28, 2002.

§ 38-702. Books remain District property.

All books purchased by the Board of Education shall be held as property of the District of Columbia and shall be loaned to pupils under such conditions as the Board of Education may prescribe.

(Jan. 31, 1930, 46 Stat. 62, ch. 32, § 2.)

Prior Codifications. — 1981 Ed., § 31-702. 1973 Ed., § 31-402.

§ 38-703. Liability for damaged books.

Parents and guardians of pupils shall be responsible for all books loaned to the children in their charge and shall be held liable for the full price of every such book destroyed, lost, or so damaged as to be made unfit for use by other pupils.

(Jan. 31, 1930, 46 Stat. 62, ch. 32, § 3.)

Prior Codifications. — 1981 Ed., § 31-703. 1973 Ed., § 31-403.

§ 38-704. Limitation on purchases.

The Board of Education shall purchase for use in the public schools only such books and supplies as shall have been duly recommended by the Superintendent of Schools and formally approved by the Board of Education.

(Jan. 31, 1930, 46 Stat. 62, ch. 32, § 4; Apr. 12, 1997, D.C. Law 11-259, § 312, 44 DCR 1423; Oct. 19, 2000, D.C. Law 13-172, § 704, 47 DCR 6308.)

Cross references. — Additional powers and duties of Superintendent, see § 38-105.

Prior Codifications. — 1981 Ed., § 31-704. 1973 Ed., § 31-404.

Effect of amendments. — D.C. Law 13-172 deleted “, through the Office of Contracting and Procurement” preceding “purchase for use”.

Emergency legislation. — For temporary (90-day) amendment of section, see § 704 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) amendment of section, see § 704 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 11-259. — Law 11-259, the “Procurement Reform Amendment Act of 1996,” was introduced in Council and

assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 12, 1997.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

§ 38-705. Sale or exchange authorized.

The Board of Education, in its discretion, is authorized to make exchange or to sell books or other educational supplies which are no longer desired for school use.

(Jan. 31, 1930, 46 Stat. 62, ch. 32, § 5.)

Prior Codifications. — 1981 Ed., § 31-705. 1973 Ed., § 31-405.

§ 38-706. Expense of textbooks and supplies.

The Board of Education is authorized to provide for the necessary expenses of purchase, distribution, care, and preservation of said textbooks and educational supplies out of money appropriated under authority of this chapter.

(Jan. 31, 1930, 46 Stat. 62, ch. 32, § 6.)

Prior Codifications. — 1981 Ed., § 31-706. 1973 Ed., § 31-406.

CHAPTER 7A. PUBLIC SCHOOL CURRICULUM.

Sec.

38-731.01. Definitions.

38-731.02. Financial literacy education in schools.

38-731.03. Establishment of the District of Columbia Financial Literacy Council.

Sec.

38-731.04. Members of the Financial Literacy Council.

38-731.05. Duties of the Financial Literacy Council.

§ 38-731.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Financial literacy” means the ability to make informed decisions about one’s personal finances, based on an understanding of the principles of credit, debt, savings and investments, depository institutions, interest, and budgeting.

(2) “Financial Literacy Council” means the District of Columbia Financial Literacy Council.

(Aug. 15, 2008, D.C. Law 17-209, § 2, 55 DCR 6979.)

Legislative history of Law 17-209. — Law 17-209, the “Financial Literacy Council Establishment Act of 2008”, was introduced in Council and assigned Bill No. 17-434 which was referred to Public Services and Consumer Affairs. The Bill was adopted on first and second

readings on May 6, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 18, 2008, it was assigned Act No. 17-405 and transmitted to both Houses of Congress for its review. D.C. Law 17-209 became effective on August 15, 2008.

§ 38-731.02. Financial literacy education in schools.

The Mayor shall submit to the Council, within 180 days after August 15, 2008, a plan for the implementation of financial literacy education in public schools.

(Aug. 15, 2008, D.C. Law 17-209, § 3, 55 DCR 6979.)

Legislative history of Law 17-209. — For Law 17-209, see notes following § 38-731.01.

§ 38-731.03. Establishment of the District of Columbia Financial Literacy Council.

There is established the District of Columbia Financial Literacy Council to assist and advise the Mayor and the Council in promoting the financial literacy of the residents of the District.

(Aug. 15, 2008, D.C. Law 17-209, § 4, 55 DCR 6979.)

Legislative history of Law 17-209. — For Law 17-209, see notes following § 38-731.01.

§ 38-731.04. Members of the Financial Literacy Council.

(a) The Financial Literacy Council shall consist of 9 members, as follows:

(1) One member shall be appointed by the Chairman of the Council.

(2) One member shall be appointed by the chairperson of the Council committee with oversight of the Department of Insurance, Securities, and Banking.

(3) One member shall be appointed by the Chief Financial Officer.

(4) Six members shall be appointed by the Mayor and shall be comprised of:

(A) One member who shall represent the Department of Insurance, Securities, and Banking;

(B) One member who shall represent the District of Columbia Public Schools; and

(C) Four members who shall be District residents with extensive knowledge of financial institutions, personal finance, and financial literacy programs.

(b) Members shall not be compensated for their service on the Financial Literacy Council.

(c) Members shall serve for terms of 4 years; provided, that of the initial members appointed:

(1) Members appointed under subsection (a)(4)(C) of this section shall serve initial terms of 2 years; and

(2) Members appointed under subsections (a)(1), (a)(2), (a)(3), (a)(4)(A), and (a)(4)(B) of this section shall serve initial terms of 4 years.

(d) The Mayor shall designate one member as the chairperson. The designated member shall serve as chairperson until the conclusion of his or her current term of membership.

(Aug. 15, 2008, D.C. Law 17-209, § 5, 55 DCR 6979.)

Legislative history of Law 17-209. — For Law 17-209, see notes following § 38-731.01.

§ 38-731.05. Duties of the Financial Literacy Council.

The Financial Literacy Council shall:

(1) Meet at least quarterly;

(2) Create and operate under its own rules of procedure;

(3) Develop a plan, to be submitted to the Mayor and the Council within 6 months after August 15, 2008, for the coordination of the District's various financial literacy efforts;

(4) Submit to the Mayor and the Council an annual report and recommendations on the financial literacy status of the District, with the first report and recommendations to be delivered within 12 months of August 15, 2008;

(5) In the first report, the Council shall endeavor to address, among other issues, matters related to District residents' recovery from foreclosure, bankruptcy, and consumer rights; and

(6) Submit to the Mayor and Council other reports and recommendations as it considers useful for the promotion of financial literacy in the District.

(Aug. 15, 2008, D.C. Law 17-209, § 6, 55 DCR 6979.)

Legislative history of Law 17-209. — For Law 17-209, see notes following § 38-731.01.

CHAPTER 7B. EDUCATION PREPAREDNESS.

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Subchapter I. Early Warning and Support System.

§ 38-751.01. Short title.

This subchapter may be cited as the “Early Warning and Support System Act of 2012”.

(June 19, 2012, D.C. Law 19-142, § 101, 59 DCR 3642.)

Legislative history of Law 19-142. — Law 19-142, the “Raising the Expectations for Education Outcomes Omnibus Act of 2012”, was introduced in Council and assigned Bill No. 19-648, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on March 6, 2012, and March 20, 2012, respectively. Signed by the Mayor on April 20, 2012, it was assigned Act No. 19-345 and transmitted to both Houses of Congress for its review. D.C. Law 19-142 became effective on June 19, 2012.

§ 38-751.02. Definitions.

For the purposes of this subchapter, the term:

- (1) “DC-BAS” means the DC Benchmark System.
- (2) “DC-CAS” means the District of Columbia Comprehensive Assessment System examination.
- (3) “Feeder school group” means one or more schools serving students in grades 4 through 9. Feeder school groups shall be selected by the Mayor and may consist of any of the following:
 - (A) An elementary school, middle school, and a high school in the same feeder pattern;
 - (B) An education campus and high school in the same feeder pattern; or
 - (C) One school that serves students in grades 4 through 9.
- (4) “Low-performing school” means a public school or public charter school

in which fewer than 40% of students performed proficient or higher on the 2011 DC-CAS.

(5) “Mid-high-performing school” means a public school or public charter school in which 40% or more of students performed proficient or higher on the 2011 DC-CAS.

(June 19, 2012, D.C. Law 19-142, § 102, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-751.03. Pilot early warning and support system.

(a)(1) There is established a pilot early warning and support system (“early warning and support system”) to track how individual students in grades 4 through 9 in 4 feeder school groups are performing on certain indicators of high school and college readiness. The early warning and support system shall identify students who are at risk of leaving school prior to graduation and develop initiatives to support high school and college readiness and increase high school graduation rates. The initiatives may include:

- (A) College and career awareness;
- (B) Parent outreach and engagement;
- (C) Tutoring and mentoring for struggling learners, including the use of technology-based programs;
- (D) Transition programs for middle and high school (particularly grades 5 and 8);
- (E) Individualized learning plans; and
- (F) Data coaches.

(2) Two feeder school groups shall be comprised of mid-high-performing schools and 2 feeder school groups shall be comprised of low-performing schools.

(b) The data collected shall include for each student in grades 4 through 9 in a feeder school group:

- (1) The results of all standardized assessments, including the DC-CAS and DC-BAS;
- (2) Measures of behavior and attendance; and
- (3) Performance measures for math and English courses, including, at a minimum, mid-year and end-of-course grades.

(c) The Mayor shall implement the early warning and support system in 4 feeder school groups and may give priority to schools in which high school and college readiness initiatives developed pursuant to subsection (a)(1) of this section are in place.

(d)(1) Schools within each feeder school group are required to collaborate with each other and with the Mayor’s office to ensure alignment of data collection.

(2) Individual student data collected through the early warning and support system shall be shared with participating feeder school groups and summarized data shall be shared with the public.

(e) The participating feeder school groups shall have access to additional funding that shall support new and existing initiatives to increase high school and college readiness and to increase high school graduation rates.

(f) Funding shall be prioritized for low-performing schools.

(June 19, 2012, D.C. Law 19-142, § 103, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-751.04. Survey.

The Mayor shall survey a sample of schools to identify existing initiatives used to support high school and college readiness and increase graduation rates. Results of the survey shall be submitted to the Council within 90 days of June 19, 2012.

(June 19, 2012, D.C. Law 19-142, § 104, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-751.05. Report.

(a) The Mayor shall create a report that shall include:

(1) School-level data collected through the early warning and support system for each participating feeder school group;

(2) Recommendations highlighting best practices to improve high school and college readiness and increase high school graduation rates among all schools, including the feeder school groups; and

(3) A plan to expand the early warning and support system to all schools within 3 years of June 19, 2012.

(b) The report shall be submitted to the Council one year after implementation of this subchapter.

(June 19, 2012, D.C. Law 19-142, § 105, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

Subchapter II. Post-Secondary Preparation Plan.

§ 38-752.01. Short title.

This subchapter may be cited as the “Post-Secondary Preparation Plan Act of 2012”.

(June 19, 2012, D.C. Law 19-142, § 201, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-752.02. Definitions.

For the purposes of this subchapter, the term:

(1) “Post-secondary institution” means an entity that awards an academic degree or professional certification, which may include a:

- (A) University;
- (B) College;
- (C) Seminary;
- (D) Vocational school;
- (E) Trade school; or
- (F) The military.

(2) “Public high school” means a public school or public charter school that provides instruction for students in the 9th through 12th grades.

(June 19, 2012, D.C. Law 19-142, § 202, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-752.03. Post-secondary preparation plan.

(a)(1) Beginning with the graduating class of 2014, the Mayor shall ensure that each public high school student applies to at least one post-secondary institution before graduation.

(2) The Mayor shall ensure that each public high school student participates in a program designed to provide students with information on applying to an appropriate post-secondary institution, including information on financial aid and other resources necessary to streamline a transition to a post-secondary institution. The program may include school-based and non-school-based resources.

(b) The Mayor shall issue a report that details the number of students that attend a post-secondary institution, including the number of students who attend each type, including:

- (1) Universities;
- (2) Colleges;
- (3) Vocational schools; and
- (4) Other post-secondary institutions.

(c) Beginning with the graduating class of 2014, the Mayor shall require that each student attending public high school takes the SAT or the American College Testing program before graduation.

(d) The Mayor may exempt a student from the requirements of subsections (a)(1) and (c) of this section, if the Mayor determines that it would constitute an undue hardship on the student.

(June 19, 2012, D.C. Law 19-142, § 203, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

Subchapter III. Highly Effective Teacher Incentive.

§ 38-753.01. Short title.

This subchapter may be cited as the “Highly Effective Teacher Incentive Act of 2012”.

(June 19, 2012, D.C. Law 19-142, § 301, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-753.02. Definitions.

For the purposes of this subchapter, the term:

(1) “DCPS” means the District of Columbia Public Schools established by § 38-171. The term “DCPS” does not include public charter schools.

(2) “High-need school” means:

(A) A DCPS school that has:

- (i) Been in operation for no fewer than 5 years;
- (ii) A minimum of 200 students;
- (iii) Forty percent or fewer of its students meeting proficiency on the District of Columbia Comprehensive Assessment System examination in both reading and math; and

(iv) Seventy-five percent or more of its students qualify for free or reduced-price lunch; or

(B) A public charter school that:

- (i) Is a tier one or tier 2 school;
- (ii) Has been in operation for no fewer than 5 years; and
- (iii) Has a minimum of 200 students.

(3) “Highly effective teacher” means:

(A) A DCPS teacher who receives a rating of “highly effective” under the DCPS IMPACT evaluation system; or

(B) A public charter school teacher who receives a rating that meets the highly effective standard agreed upon by the Mayor and that public charter school.

(June 19, 2012, D.C. Law 19-142, § 302, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-753.03. Pilot incentive program.

(a)(1) There is established a pilot incentive program to encourage highly

effective teachers to teach in high-need schools for the start of the 2013-2014 school year.

(2) The incentives shall include:

(A) A one-time bonus of \$10,000;

(B) Homebuyer and other housing assistance, including:

(i) Access to subsidized rental housing units;

(ii) Forgivable loans for a down payment of up to 10% of the median home price in the District; and

(iii) Access to low-interest mortgage loans;

(C) An amount of up to \$5,000 to be expended on tuition assistance, which may include reimbursement for specific courses that lead to certification in high-demand subject areas, such as math and science, and loan-repayment assistance for existing education loans; and

(D) An amount of up to \$3,000 to be used as income tax credits.

(3) The incentives shall not exceed the maximum allowable amounts over the 3-year period of the pilot program.

(b)(1)(A) The pilot program shall consist of 4 high-need schools. At least one of the schools shall be a tier one or tier 2 public charter school.

(B) At least 3, but not more than 5, teachers shall be selected for each school of the 4 schools in the pilot program.

(2) The Mayor shall establish a plan to implement the pilot program. The plan shall be submitted to the Council for review within 90 days of June 19, 2012. The plan shall include:

(A) A process for teachers to apply to the program;

(B) A process for selecting qualified applicants, which shall include a requirement that a teacher commit to serving a minimum of 3 years at a high-need school; and

(C) Guidelines for selecting high-need schools, which shall include schools that have:

(i) A proficiency in both reading and math of 40% or below; and

(ii) At least 75% or more of students who qualify for free or reduced-price lunch; and

(D) Guidelines for selecting highly effective teachers.

(3) For DCPS, highly effective teachers shall be selected according to IMPACT standards. For public charter schools, the Mayor shall work with each public charter school to develop the criteria for selecting highly effective teachers.

(June 19, 2012, D.C. Law 19-142, § 303, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-753.04. Report.

The Mayor shall provide a report by August 30th of each year in which the pilot program is in operation, which shall include:

- (1) The number of teachers committed to continuing the pilot program for the following year;
- (2) Feedback from the participating teachers regarding implementation of the pilot program and the incentives;
- (3) An assessment of the effectiveness of the pilot program; and
- (4) Recommendations for improving the pilot program.

(June 19, 2012, D.C. Law 19-142, § 304, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-753.05. Sunset.

This subchapter shall expire 3 years from June 19, 2012.

(June 19, 2012, D.C. Law 19-142, § 305, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

Subchapter IV. Community Schools Incentive.

§ 38-754.01. Short title.

This subchapter may be cited as the “Community Schools Incentive Act of 2012”.

(June 19, 2012, D.C. Law 19-142, § 401, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-754.02. Definitions.

For the purposes of this subchapter, the term:

- (1) “Community partner” means a provider of one or more eligible services.
- (2) “Community school” means a public and private partnership to coordinate educational, developmental, family, health, and after-school-care programs during school and non-school hours for students, families, and local communities at a public school or public charter school with the objectives of improving academic achievement, reducing absenteeism, building stronger relationships between students, parents, and communities, and improving the skills, capacity, and well-being of the surrounding community residents.
- (3) “Eligible consortium” means a partnership established between a local education agency and one or more community partners for purposes of establishing, operating, and sustaining a community school.
- (4) “Eligible services” means:

(A) Primary medical and dental care that will be available to students and community residents;

(B) Mental health prevention and treatment services that will be available to students and community residents;

(C) Academic-enrichment activities designed to promote a student's cognitive development and provide opportunities to practice and apply academic skills;

(D) Programs designed to increase attendance, including reducing early chronic absenteeism rates;

(E) Youth development programs designed to promote young people's social, emotional, physical, and moral development, including arts, sports, physical fitness, youth leadership, community service, and service-learning opportunities;

(F) Early childhood education, including Head Start and Early Head Start programs;

(G) Programs designed to:

(i) Facilitate parental involvement in, and engagement with, their children's education, including parental activities that involve supporting, monitoring, and advocating for their children's education;

(ii) Promote parental leadership in the life of the school; and

(iii) Build parenting skills;

(H) School-age child-care services, including before-school and after-school services and full-day programming that operates during school holidays, summers, vacations, and weekends;

(I) Programs that provide assistance to students who have been truant, suspended, or expelled and that offer multiple pathways to high school graduation or General Educational Development completion;

(J) Youth and adult job-training services and career-counseling services;

(K) Nutrition-education services;

(L) Adult education, including instruction in English as a second language, adult literacy, computer literacy, financial literacy, and hard-skills training; or

(M) Programs that provide remedial education and enrichment activities.

(June 19, 2012, D.C. Law 19-142, § 402, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-754.03. Administration of Community Schools Incentive Initiative.

(a) The Mayor shall establish and administer the multiyear Community Schools Incentive Initiative ("Incentive Initiative") to award multiyear grants to incentivize the establishment of no fewer than 5 new community schools within one year of June 19, 2012, with priority given to schools that have:

(1) A focus on mental health prevention and treatment services and adult education and training; and

(2) A student population of which at least 75% of the students qualify for free or reduced-price lunch.

(b) The Mayor shall promote and encourage the use of public school and public charter school facilities by community and neighborhood groups.

(c) Within 60 days of June 19, 2012, the Mayor shall convene a Community Schools Advisory Committee that shall consist of:

(1) The Chancellor of the District of Columbia Public Schools, or designee;

(2) The Director of the Department of Parks and Recreation, or designee;

(3) The Director of the Department of Health, or designee;

(4) The Director of the Department of Employment Services, or designee;

(5) The President of the State Board of Education, or designee;

(6) The President of the University of the District of Columbia, or designee;

(7) The President of the University of the District of Columbia Community College, or designee;

(8) The Deputy Mayor for Education, or designee;

(9) Representatives from at least 4 community-based organizations;

(10) Representatives from at least 4 philanthropic or business organizations;

(11) The Director of the Public Charter School Board, or designee; and

(12) The directors of 2 public charter schools.

(d) The Community Schools Advisory Committee shall:

(1) Advise the Mayor on the development of the Incentive Initiative, including the development of a results-based framework and accompanying performance indicators with which to measure the success of the Incentive Initiative;

(2) Participate in the selection process for Incentive Initiative grantees;

(3) Develop recommendations on how all public schools can become centers of their communities by opening school facilities for nonprofit and community use;

(4) Identify potential funding sources for the provision of eligible services within the Incentive Initiative; and

(5) Develop yearly measurable performance goals to assess:

(A) How to increase the percentage of families and students receiving services for each year of the Incentive Initiative;

(B) The outcomes for students and families, particularly student academic achievement; and

(C) The number of public schools and public charter schools that have established formal relationships with community and neighborhood groups to use school facilities.

(e) Within 180 days of June 19, 2012, the Mayor shall establish a process for awarding grants of no more than \$200,000 a year to successful eligible consortiums and shall require that each application for an Incentive Initiative grant include:

(1) An assessment of the local school community and the neighborhood's needs and assets;

(2) A description of the proposed eligible consortium, including the type and number of community partners, as defined in § 38-754.02, and how the eligible consortium shall address the needs and build upon the assets of the community that the eligible consortium will serve;

(3) A proposed budget and narrative description of the proposed use of grant funds, which budget shall reflect a core concept of service coordination and integration and the narrative describe how the eligible consortium shall provide at least 4 additional eligible services that did not exist before the establishment of the eligible consortium;

(4) The identification of operational funding for eligible services and community partners; and

(5) A plan for the development of a community advisory board to include members of school leadership, school faculty, parents of school students, community leaders, community-based organizations, and other community members.

(f) The Mayor shall:

(1) Conduct periodic evaluations of the progress achieved with funds allocated under a grant, consistent with the purposes of this section;

(2) Use the evaluations to refine and improve activities conducted with the grant and the performance measures for the activities;

(3) Make the results of the evaluations publicly available, including providing public notice of the availability; and

(4) Identify best practices and lessons learned for the purpose of informing the District-wide community school policy.

(June 19, 2012, D.C. Law 19-142, § 403, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-754.04. Establishment of Community School Fund.

(a) There is established as a nonlapsing fund the Community Schools Fund (“Fund”). All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b)(1) The Fund shall be used solely for the purposes of supporting schools designated as community schools.

(2) No more than 10% of the Fund shall be used to fund administrative costs associated with the operations of the Mayor; and

(3) The Fund shall be used to fund the planning and implementation of the Incentive Initiative grant program.

(c) The following monies shall be deposited into the Fund:

(1) Federal funds and grants;

(2) Local funds;

(3) Gifts; and

(4) Payments from public or private sources.

(June 19, 2012, D.C. Law 19-142, § 404, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

Subchapter V. Early Childhood Education.

§ 38-755.01. Short title.

This subchapter may be cited as the “Early Childhood Education Act of 2012”.

(June 19, 2012, D.C. Law 19-142, § 501, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-755.02. Definitions.

For the purposes of this subchapter, the term:

(1) “Chancellor” means the chief executive officer of the District of Columbia Public Schools appointed pursuant to § 38-174.

(2) “DCPS” means the District of Columbia Public Schools established by § 38-171.

(June 19, 2012, D.C. Law 19-142, § 502, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-755.03. Requirements and goals.

(a) To meet the academic achievement requirements and goals set forth in this section, the Chancellor shall:

(1) Establish guidelines for academic achievement;

(2) Develop and implement curricula; and

(3) Ensure that DCPS staff and administrators are trained to implement the curricula established pursuant to paragraph (2) of this subsection to meet the goals set forth in subsection (b) of this section.

(b) The Chancellor shall be responsible for:

(1) Academic achievement goals, which shall include the reasonable expectation that all children:

(A) Three or 4 years of age in DCPS shall be properly prepared for entry and achievement in the DCPS kindergarten program; and

(B) In the 3rd grade, upon being promoted to the 4th grade, shall be able to read independently and to understand the fundamental of mathematics so that they can:

- (i) Add;
- (ii) Subtract;
- (iii) Multiply; and
- (iv) Divide; and

(2) Readiness goals, which shall include readiness evaluations for all children:

(A) Three or 4 years of age in DCPS, which shall be designed and implemented to measure the ability of a student entering the DCPS kindergarten program and to determine his or her readiness for entry and achievement in DCPS; and

(B) In kindergarten through 3rd grade in DCPS, which shall be designed and implemented to measure the reading and mathematical ability of a student entering a grade kindergarten through 3rd grade to determine the student's readiness for entry and achievement in the relevant grade level.

(June 19, 2012, D.C. Law 19-142, § 503, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

§ 38-755.04. Tracking and monitoring.

The Chancellor shall:

(1) Track and monitor the preparedness of:

(A) The early childhood population of children 3 and 4 years of age to determine the children's readiness for entry and achievement in DCPS; and

(B) Children in kindergarten through 3rd grade in DCPS to determine their readiness for entry and achievement in the 4th grade;

(2) Develop a plan to address:

(A) The early childhood population of children 3 and 4 years of age who are not ready for entry and achievement in DCPS; and

(B) Children in kindergarten through 3rd grade in DCPS who are not ready for entry and achievement in the 4th grade;

(3) Conduct readiness evaluations annually to ascertain whether:

(A) Children 3 and 4 years of age are prepared for kindergarten; and

(B) Children in the 3rd grade are prepared to be promoted to the 4th grade; and

(4) Submit to the Council and the Mayor, by October 1 of each year:

(A) The results of the readiness evaluations required by paragraph (3) of this section; and

(B) A DCPS annual report for the preceding academic year delineating the progress and readiness of all students.

(June 19, 2012, D.C. Law 19-142, § 504, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

Subchapter VI. Rulemaking.

§ 38-756.01. Rules.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter.

(b) Each local education agency may advise the Mayor with respect to all proposed matters or rules issued pursuant to this chapter.

(June 19, 2012, D.C. Law 19-142, § 601, 59 DCR 3642.)

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

Subchapter VII. Applicability of Chapter.

§ 38-757.01. Applicability.

This chapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

(June 19, 2012, D.C. Law 19-142, § 701, 59 DCR 3642.)

Emergency legislation. — For temporary (90 day) amendment of section 701 of D.C. Law 19-345, see § 7009 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 7009 of Fiscal Year 2013 Budget

Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-142. — For history of Law 19-142, see notes under § 38-751.01.

CHAPTER 8. PUBLIC SCHOOL FOOD SERVICES.

Sec.

38-801. Department of Food Services.

38-802. Powers of Board.

38-803. Service credit for retirement; deposits.

38-804. Deposit of revenues and receipts.

38-805. Equipment appropriations.

Sec.

38-806. National School Lunch Act.

38-807. Audits of accounts.

38-808. Distribution of commodities.

38-809. Appropriations for distribution of commodities.

§ 38-801. Department of Food Services.

There is hereby created in the public schools of the District of Columbia a Department of Food Services, which Department, under the direction and control of the Board of Education of the District of Columbia, hereinafter referred to as the "Board," is hereby authorized to conduct a centralized system of public school cafeterias, lunchrooms, and related services, hereinafter referred to as "food services."

(Oct. 8, 1951, 65 Stat. 367, ch. 448, title I, § 1; Apr. 12, 1997, D.C. Law 11-259, § 313, 44 DCR 1423; Oct. 19, 2000, D.C. Law 13-172, § 705, 47 DCR 6308.)

Cross references. — School cafeterias and restaurants, applicability of restaurant license law, see § 47-2827.

Section references. — This section is referred to in § 31-806.

Prior Codifications. — 1981 Ed., § 31-801. 1973 Ed., § 31-1401.

Effect of amendments. — D.C. Law 13-172 deleted the former second sentence providing: "Contracting for services, supplies, or equipment shall be done through the office of Contracting and Procurement".

Emergency legislation. — For temporary (90-day) amendment of section, see § 705 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) amendment of section, see § 705 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its

review. D.C. Law 11-259 became effective on April 12, 1997.

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Editor's notes. — Contracting out of food services and security services by Board of Education: Section 1203 of D.C. law 11-98 required the Board of Education to contract out, beginning in School Year 1995-96 and Fiscal Year 1996, all food services operations and security services for the D.C. Public Schools and to contract out, for no more than a 3-year period, beginning in School Year 1995-96 and Fiscal Year 1996, the development of new management and data systems, as well as training of currently employed personnel to use and manage these systems, in the area of budget, finance, personnel/human resources, management information services, procurement, and supply management.

Section 1401 of D.C. Law 11-98 provided that §§ 201, 301, 302, and 1203 of the act shall apply upon enactment by Congress of the District of Columbia Appropriations Act, 1996.

§ 38-802. Powers of Board.

For carrying out the purposes of this chapter, the Board is empowered:

(1) To establish in the Department of Food Services an Office of Central

Management consisting of a Director and assistant directors of Food Services, whose compensation shall be fixed in accordance with the District of Columbia Teachers' Salary Act of 1955, as amended;

(2) To make and enforce such rules and regulations as it deems necessary for the government of the Department of Food Services and for the use and enjoyment of the facilities and services of such department;

(3) Upon the written recommendation of the Superintendent of Schools, to employ such personnel as may be required to manage cafeterias, lunchrooms, and related services and to conduct the Office of Central Management;

(4) Upon the written recommendation of the Superintendent of Schools, to employ on a full-time or part-time basis such personnel as may be required for the operation and maintenance of food services. The Mayor of the District of Columbia shall fix and adjust, from time to time, the rates of pay of such personnel in accordance with the rates of pay of personnel in positions of similar levels of duties, responsibilities, and qualification requirements, as determined by the Mayor, and with respect to part-time employees without regard to prohibitions or limitations relating to dual compensation as contained in any act of Congress. Persons employed under the provisions of this paragraph shall be entitled to compensation for all time when and as they perform service, and, in addition thereto, shall be entitled to compensation for such holidays as fall within a regular tour of duty of not less than 5 days in any established workweek. Persons employed under this paragraph shall not be entitled, by reason of such service, to vacation or annual leave with pay. Notwithstanding the provisions of any other law, such persons shall be entitled to sick leave with pay, to be cumulative at the rate of 1 day a month, September to June, inclusive, of each year, the total cumulation not to exceed 30 days, to be granted under such conditions as the Board may by regulation prescribe; provided, that as to part-time employees such leave shall be prorated on an hourly basis. The days of sick leave with pay provided for in this section shall mean days on which employees would otherwise work and receive pay and shall be exclusive of Saturdays, Sundays, holidays, and vacation periods authorized by the Board; and

(5) Upon the written recommendation of the Superintendent of Schools, to accept for the benefit of the program of food services gifts of money and of personal property.

(Oct. 8, 1951, 65 Stat. 367, ch. 448, title I, § 2; Oct. 25, 1968, 82 Stat. 1363, Pub. L. 90-640, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3204(c), 25 DCR 5740; June 14, 1980, D.C. Law 3-70, § 7(k)(1), 27 DCR 1776.)

Section references. — This section is referred to in §§ 1-636.02 and 38-806.

Prior Codifications. — 1981 Ed., § 31-802. 1973 Ed., § 31-1402.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respec-

tively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-70. — Law 3-70 was introduced in Council and assigned Bill No. 3-197, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 18, 1980 and April 1, 1980, respectively. Signed by

the Mayor on April 25, 1980, it was assigned Act No. 3-176 and transmitted to both Houses of Congress for its review.

References in text. — “The District of Columbia Teachers’ Salary Act of 1955 as amended,” referred to in paragraph (1) of this section, refers to the Act of August 5, 1955, 69 Stat. 521, ch. 569.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-803. Service credit for retirement; deposits.

Service rendered by any person for salary or wages as an employee of any cafeteria or lunchroom operated in the public school buildings of the District during any period prior to the date when such cafeteria or lunchroom is placed under the Office of Central Management shall, if and when such person becomes an employee of the Department of Food Services, be deemed to be service rendered for the government of the District of Columbia for purposes of subchapter III of Chapter 83 of Title 5, United States Code, to be computed in accordance with §§ 8332 and 8333 of Title 5, United States Code; provided, that such person shall make deposits covering such service as provided in § 8334 of Title 5, United States Code; and provided further, that any such person may elect to make such deposits in installments in accordance with the provisions of § 8334 of Title 5, United States Code.

(Oct. 8, 1951, 65 Stat. 368, ch. 448, title I, § 3; Oct. 25, 1951, 65 Stat. 637, ch. 560, § 3; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 1.)

Section references. — This section is referred to in § 38-806.

Prior Codifications. — 1981 Ed., § 31-803. 1973 Ed., § 31-1403.

§ 38-804. Deposit of revenues and receipts.

All revenues and receipts of any nature whatever derived from the operation of food services, or as otherwise provided by this chapter shall, under regulations established by the Mayor, be paid to the D.C. Treasurer and deposited in the General Fund, and accounted for within the General Fund as a separate revenue source allocable to provide authorization for such school authority as the Board of Education may approve. Any unexpended balance at the end of the fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 5; Oct. 25, 1968, 82 Stat. 1363, Pub. L. 90-640, § 2; June 14, 1980, D.C. Law 3-70, § 7(k)(2), 27 DCR 1776; Sept. 14, 2011, D.C. Law 19-21, § 9056, 58 DCR 6226.)

Section references. — This section is referred to in § 38-806.

Prior Codifications. — 1981 Ed., § 31-804. 1973 Ed., § 31-1404.

Effect of amendments. — D.C. Law 19-21 substituted “the fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia” for “the year shall be reserved as a restricted fund balance and

used to provide authorization to expend for subsequent years subject to the direction of the Board of Education”.

Legislative history of Law 3-70. — For legislative history of D.C. Law 3-70, see Historical and Statutory Notes following § 38-802.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

§ 38-805. Equipment appropriations.

Appropriations are authorized for the payment of compensation for all personal services necessary for the operation of the Department of Food Services and for the acquisition, maintenance, and replacement of equipment for use in that operation.

(Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 6; Sept. 2, 1958, 72 Stat. 1735, Pub. L. 85-901, § 1; Oct. 25, 1968, 82 Stat. 1363, Pub. L. 90-640, § 3.)

Section references. — This section is referred to in § 38-806.

Prior Codifications. — 1981 Ed., § 31-805. 1973 Ed., § 31-1405.

§ 38-806. National School Lunch Act.

Insofar as the Board shall conduct a school lunch program under the authority of §§ 38-801 to 38-807, it shall be considered a “school” within the meaning of the National School Lunch Act (42 U.S.C. § 1751 et seq.), and all funds to which it may thus become entitled as a participating school under the National School Lunch Act shall be deposited in the General Fund as provided in § 38-804.

(Oct. 8, 1951, 65 Stat. 370, ch. 448, title I, § 8; June 14, 1980, D.C. Law 3-70, § 7(k)(4), 27 DCR 1776.)

Prior Codifications. — 1981 Ed., § 31-806. 1973 Ed., § 31-1407.

Legislative history of Law 3-70. — For

legislative history of D.C. Law 3-70, see Historical and Statutory Notes following § 38-802.

§ 38-807. Audits of accounts.

It shall be the duty of the Auditor of the District of Columbia to audit at least quarterly the accounts of the Department of Food Services and make reports thereof to the Mayor of the District of Columbia.

(Oct. 8, 1951, 65 Stat. 370, ch. 448, title I, § 9.)

Section references. — This section is referred to in § 38-806.

Prior Codifications. — 1981 Ed., § 31-807. 1973 Ed., § 31-1408.

Editor's notes. — Office of Auditor abolished: The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorga-

nization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, and effective September 2, 1952, established, under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The Order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization

Order No. 19 established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. The function of the quarterly audit and report to the Commissioner of the accounts of the Department of Food Services was transferred to the Internal Audit Office. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order Nos. 3 and 19 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated December 13, 1967. Organization Order No. 3 established within the newly created Department of General Administration, an Internal Audit Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Part IVB of Organization Order No. 3 and that portion of Commissioner's Order No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue were revoked by Organization Order No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof. Organization Order No. 50, dated December 31, 1974, estab-

lished the Office of Budget and Management Systems, and transferred to that Office the functions of the Municipal Audit Office. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Revenue Development.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-808. Distribution of commodities.

The State Education Office of the District of Columbia is authorized: (1) to enter into a contract or contracts from time to time with the United States Department of Agriculture for the distribution to schools and to public and charitable institutions of commodities made available by said Department; and (2) to carry out, under regulations of the said Board, a program or programs of furnishing milk to school children in the District, including the purchase and distribution of milk under agreement with the United States Department of Agriculture; provided, that all moneys collected under such program or programs shall be paid to the Director of the Department of Finance and Revenue of the District of Columbia for deposit into the Treasury of the United States to the credit of the District.

(Oct. 8, 1951, 65 Stat. 370, ch. 448, title II, § 201; Oct. 21, 2000, D.C. Law 13-176, § 8(b), 47 DCR 6835.)

Section references. — This section is referred to in § 38-809.

Prior Codifications. — 1981 Ed., § 31-808. 1973 Ed., § 31-1409.

Effect of amendments. — D.C. Law 13-176 authorized substitution of State Education Office for Board of Education where appearing in this section.

Legislative history of Law 13-176. — Law 13-176, the "State Education Office Establish-

ment Act of 2000," was introduced in Council and assigned Bill No. 13-416, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 6, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 26, 2000, it was assigned Act No. 13-187 and transmitted to both Houses of Congress for its review. D.C. Law 13-176 became effective on October 21, 2000.

References in text. — Pursuant to the Office of the Chief Financial Officer's "Notice of Public Interest" published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner's Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

Editor's notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance

Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

§ 38-809. Appropriations for distribution of commodities.

Appropriations are hereby authorized to enable the Board of Education to carry out the contracts and programs authorized by § 38-808.

(Oct. 8, 1951, 65 Stat. 370, ch. 448, title II, § 202.)

Prior Codifications. — 1981 Ed., § 31-809.

1973 Ed., § 31-1410.

CHAPTER 8A. HEALTHY SCHOOLS.

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38-828.02. Applicability.

*Subchapter I. Definitions; Establishment of Healthy Schools Fund.***§ 38-821.01. Definitions.**

For the purposes of this chapter, the term:

(1) "Healthy Schools Fund" means the fund established by § 38-821.02.

(2) "Healthy Schools and Youth Commission" or "Commission" means the body established by § 38-827.01.

(3) "Locally grown" means grown in Delaware, the District of Columbia, Maryland, New Jersey, North Carolina, Pennsylvania, Virginia, or West Virginia.

(4) "Locally processed" means processed at a facility in Delaware, the District of Columbia, Maryland, New Jersey, North Carolina, Pennsylvania, Virginia, or West Virginia.

(5) "Meals" means breakfast, lunch, or after-school snacks served as a part of the National School Lunch Program, School Breakfast Program, or Summer Food Service Program, or after-school meals served as part of the Child and Adult Care Food Program.

(6) "Moderate-to-vigorous physical activity" means movement resulting in a substantially increased heart rate and breathing.

(6A) “Participating private school” means a private school that participates in the National School Lunch Program, established by the Richard B. Russell National School Lunch Act, approved June 4, 1946 (60 Stat. 230; 42 U.S.C. § 1771 et seq.), and elects to participate in the Healthy Schools Act program.

(7) “Public charter school” means a school chartered under Chapter 18 of this title [§ 38-1800.01 et seq.]. The term “public charter school” shall not include private or parochial schools.

(8) “Public school” means a school operated by the District of Columbia Public Schools, established by § 38-171.

(9) “Sustainable agriculture” means an integrated system of plant and animal production practices having a site-specific application that will, over the long-term:

(A) Satisfy human food and fiber needs;

(B) Enhance environmental quality and the natural resource base upon which the agricultural economy depends;

(C) Make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;

(D) Sustain the economic viability of farm operations; and

(E) Enhance the quality of life for farmers and society as a whole.

(10)(A) “Unprocessed” means foods that are nearest their whole, raw, and natural state, and contain no artificial flavors or colors, synthetic ingredients, chemical preservatives, or dyes.

(B) For the purposes of this paragraph, food which undergoes the following processes shall be deemed to be unprocessed:

(i) Cooling, refrigerating, or freezing;

(ii) Size adjustment through size reduction made by peeling, slicing, dicing, cutting, chopping, shucking, or grinding;

(iii) Drying or dehydration;

(iv) Washing;

(v) The application of high water pressure or “cold pasteurization”;

(vi) Packaging, such as placing eggs in cartons, and vacuum packing and bagging, such as placing vegetables in bags;

(vii) Butchering livestock, fish, or poultry; and

(viii) The pasteurization of milk.

(July 27, 2010, D.C. Law 18-209, § 101, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(a), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37 added par. (6A).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

Legislative history of Law 18-209. — Law 18-209, the “Healthy Schools Act of 2010”, was introduced in Council and assigned Bill No.

18-564, which was referred to the Committee of the Whole and the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 21, 2010, it was assigned Act No. 18-428 and transmitted to both Houses of Congress for its review. D.C. Law 18-209 became effective on July 27, 2010.

Legislative history of Law 19-37. — Law

19-37, the “Healthy Schools Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-144, which was referred to the Committee of the Whole and the committee on Government Operations and the Environment. The Bill was adopted on first and second read-

ings on June 21, 2011, and July 12, 2011, respectively. Signed by the Mayor on August 9, 2011, it was assigned Act No. 19-152 and transmitted to both Houses of Congress for its review. D.C. Law 19-37 became effective on October 20, 2011.

§ 38-821.02. Establishment of the Healthy Schools Fund.

(a) There is established as a nonlapsing fund the Healthy Schools Fund (“Fund”), which shall be used solely as provided in subsection (c) of this section and administered by the Office of the State Superintendent of Education. The Fund shall be funded by annual appropriations, which shall be deposited into the Fund.

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(c) The funds in the Fund shall be used as follows:

(1) To provide additional funding for healthy school meals, the Office of the State Superintendent of Education shall reimburse public schools, public charter schools, and participating private schools as follows:

(A) Ten cents for each breakfast meal served that meets the requirements of §§ 38-822.02 and 38-822.03; and

(B) Ten cents for each lunch meal served that meets the requirements of §§ 38-822.02 and 38-822.03.

(2) Repealed.

(3) To eliminate the reduced-price copayment under § 38-822.03(b)(1), the Office of the State Superintendent of Education shall reimburse public schools, public charter schools, and participating private schools 40 cents for each lunch meal served to students who qualify for reduced-price meals.

(4) To provide resources to implement the breakfast-in-the-classroom program under § 38-822.03(a)(2), for the 2010-2011 school year, the Office of the State Superintendent of Education shall provide \$7 per student to public schools and public charter schools participating in the National School Lunch Program, in which more than 40% of students qualify for free or reduced-price meals.

(5)(A) To encourage local foods to be served in schools, the Office of the State Superintendent of Education shall provide an additional 5 cents per day reimbursement to public schools, public charter schools, and participating private schools when at least one component of a reimbursable breakfast or lunch meal is comprised entirely of locally grown and unprocessed foods; provided, that the schools report the name and address of the farms where the locally grown foods were grown to the Office of the State Superintendent of Education.

(B) For the purposes of this paragraph, the term “locally grown and unprocessed foods” shall not include milk.

(6) To increase physical activity in schools, the Office of the State Superintendent of Education shall make grants available, subject to the availability of funds in the Fund, through a competitive process to public schools and public charter schools; provided, that schools shall meet the requirements of § 38-824.02 and seek to increase the amount of physical activity in which their students engage.

(7) To support school gardens, the Office of the State Superintendent of Education shall make grants available, subject to the availability of funds in the Fund, through a competitive process to public schools, public charter schools, and other organizations.

(d) The Office of the State Superintendent of Education may, by rule, increase the amounts, as set forth in subsection (c) of this section, to further improve the quality and nutrition of school meals.

(e) The Office of the State Superintendent of Education may withhold local funds provided by subsection (c) of this section from public schools and public charter schools that do not meet the requirements of §§ 38-822.02, 38-822.03, 38-822.05, and 38-822.06.

(f) Beginning on October 1, 2011, an amount of \$4,266,000 from the revenues derived from the collection of the tax imposed upon all vendors by § 47-2002 shall be deposited annually into the Fund.

(g) All excess monies remaining in the Fund at the end of a fiscal year shall be administered by the Office of the State Superintendent of Education for the purposes set forth in subsection (c)(6) and (7) of this section.

(July 27, 2010, D.C. Law 18-209, § 102, 57 DCR 4779; Apr. 8, 2011, D.C. Law 18-370, § 412, 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 4012, 58 DCR 6226; Oct. 20, 2011, D.C. Law 19-37, § 2(b), 58 DCR 6841.)

Effect of amendments. — D.C. Law 18-370, in subssecs. (c)(6) and (7), substituted “shall make grants available, subject to the availability of funds in the Fund,” for “shall make grants available”.

D.C. Law 19-21 repealed subsec. (c)(2); and added subssecs. (f) and (g). Prior to repeal, subsec. (c)(2) formerly read as follows: “(2) To provide free breakfast meals in public charter schools under § 38-822.03(a), the Office of the State Superintendent of Education shall reimburse public charter schools as follows:”

D.C. Law 19-37, in subssecs. (c)(1) and (3), substituted “public schools, public charter schools, and participating private schools” for “public schools and public charter schools”; and rewrote subsec. (c)(5), which formerly read:

“ (5) To encourage local foods to be served in schools, the Office of the State Superintendent of Education shall provide an additional 5 cents per lunch meal reimbursement to public schools and public charter schools when at least one component of a reimbursable lunch meal is comprised entirely of locally grown and unprocessed foods; provided, that the schools report the name and address of the farms where the

locally grown foods were grown to the Office of the State Superintendent of Education.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 412 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 4012 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 2(b) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of section, see § 4062(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 18-370. — Law 18-370, the “Fiscal Year 2011 Supplemental Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Legislative history of Law 19-21. — For

history of Law 19-21, see notes under § 38-271.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

Short title. — Short title: Section 411 of D.C. Law 18-370 provided that subtitle B of title IV of the act may be cited as “Healthy Schools Amendment Act of 2010”.

Short title: Section 4011 of D.C. Law 19-21 provided that subtitle B of title IV of the act may be cited as “Healthy Schools Technical Amendment Act of 2011”.

Subchapter II. School Nutrition.

§ 38-822.01. Goals.

(a) Public schools, public charter schools, and participating private schools shall serve healthy and nutritious meals to students. Schools are strongly encouraged to consider serving vegetarian food options each week.

(b) Public schools, public charter schools, and participating private schools are strongly encouraged to participate in the United States Department of Agriculture’s HealthierUS School Challenge program and achieve Gold Award Level certification.

(July 27, 2010, D.C. Law 18-209, § 201, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(c), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37, in subsecs. (a) and (b), substituted “Public schools, public charter schools, and participating private schools” for “Public schools and public charter schools”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(c) of Healthy Schools Emergency Amendment Act of

2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-822.02. Nutritional standards for school meals.

(a) All breakfast, lunch, after-school snacks and suppers, and summer meals served to students in public schools, public charter schools, and participating private schools or by organizations participating in the Afterschool Meal Program or the Summer Food Service Program shall meet or exceed the federal nutritional standards set forth in:

(1) The Child Nutrition Act of 1996, approved October 11, 1996 (80 Stat. 885; 42 U.S.C. § 1771 et seq.);

(2) The Richard B. Russell National School Lunch Act, approved June 4, 1946 (60 Stat. 230; 42 U.S.C. § 1751 et seq.);

(3) 7 C.F.R. Parts 210, 215, 220, 225, and 226; and

(4) Other applicable federal law.

(b) In addition to the requirements of subsection (a) of this section, breakfast, lunch, after-school snacks and suppers, and summer meals served to students in public schools, public charter schools, and participating private

schools or by organizations participating in the Afterschool Meal Program or the Summer Food Service Program shall meet or exceed:

(1) The following nutritional requirements per serving:

(A) Saturated fat: Fewer than 10% of total calories;

(B) Trans fat: Zero grams; and

(C)(i) Sodium:

(I) For breakfast meals:

(aa) Less than 430 milligrams for Grades Kindergarten through

5;

(bb) Less than 470 milligrams for Grades 6 through 8; and

(cc) Less than 500 milligrams for Grades 9 through 12; and

(II) For lunch meals:

(aa) Less than 640 milligrams for Grades Kindergarten through

5;

(bb) Less than 710 milligrams for Grades 6 through 8; and

(cc) Less than 740 milligrams for Grades 9 through 12.

(ii) The requirements of this subparagraph shall not apply until August 1, 2020; provided, that public schools, public charter schools, and participating private schools shall gradually reduce the amount of sodium served in school meals; and

(2) The serving requirements of the United State Department of Agriculture's HealthierUS School Challenge program at the Gold Award Level for vegetables, fruits, whole grains, milk, and other foods served in school meals, as may be revised from time to time, notwithstanding any termination of the program.

(c) The Office of the State Superintendent of Education may adopt standards that exceed the requirements of this section.

(July 27, 2010, D.C. Law 18-209, § 202, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(d), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37, in the lead-in language of subsec. (a), substituted “breakfast, lunch, after-school snacks and suppers, and summer meals served to students in public schools, public charter schools, and participating private schools or by organizations participating in the Afterschool Meal Program or the Summer Food Service Program” for “breakfast, lunch, and after-school meals served to students in public schools and public charter school or by organizations participating in the Afterschool Meal Program”; in the lead-in language of subsec. (b), substituted “breakfast, lunch, after-school snacks and suppers, and summer meals served to students in public schools, public charter schools, and participating private schools or by organizations participating in the Afterschool Meal Program or the Summer Food Service Program” for “breakfast and lunch meals served to students in each public school and public charter school”; and, in subsec. (b)(1)(C)(ii), substituted “public

schools, public charter schools, and participating private schools” for “public schools and public charter schools”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(d) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of section, see § 4062(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-822.03. Additional requirements for public school meals.

(a)(1) Public schools, public charter schools, and participating private schools shall offer free breakfast to all students.

(2) If more than 40% of the students at a school qualify for free or reduced-price meals:

(A) A public elementary school, public charter elementary school, and participating private elementary school shall offer breakfast in the classroom each day;

(B) A public middle and high school, public charter middle and high school, and participating private middle and high school shall offer alternative serving models, such as breakfast in the classroom or grab-and-go carts, in one or more locations with high student traffic, other than the cafeteria, each day to increase breakfast participation; and

(C) The requirements of this paragraph shall not apply to a public school or a public charter school in which the school's current breakfast participation rate, without breakfast-in-the-classroom, exceeds 75% of its average daily attendance.

(b) Public schools, public charter schools, and participating private schools shall:

(1) Not charge students for meals if the students qualify for reduced-price meals;

(2) Provide meals that meet the dietary needs of children with diagnosed medical conditions as required by a physician;

(3) Solicit input from students, faculty, and parents, through taste tests, comment boxes, surveys, a student nutrition advisory council, or other means, regarding nutritious meals that appeal to students;

(4) Promote healthy eating to students, faculty, staff, and parents;

(5) Provide at least 30 minutes for students to eat lunch and sufficient time during the lunch period for every student to pass through the food service line; and

(6) Participate in federal nutritional and commodity foods programs whenever possible.

(c) Public schools, public charter schools, and participating private schools are encouraged to make cold, filtered water available free to students, through water fountains or other means, when meals are served to students in public schools, public charter schools, and participating private schools.

(July 27, 2010, D.C. Law 18-209, § 203, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(e), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37 rewrote subsecs. (a) and (c); in the lead-in language of subsec. (b), substituted “Public schools, public charter schools, and participating private schools” for “Public schools and public charter schools”; in subsec. (b)(5), inserted “and sufficient time during the lunch

period for every student to pass through the food service line,”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(e) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of section, see § 4062(c) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(c) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act

of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-822.04. Central kitchen.

(a) The District of Columbia Public Schools shall establish a central facility in the District to:

(1) Prepare, process, grow, and store healthy and nutritious foods for schools and nonprofit organizations;

(2) Support nutrition education programs; and

(3) Provide job-training programs for students and District residents.

(b) The District of Columbia Public Schools shall provide reasonable access to charter schools that wish to use the facility.

(c) The Department of Real Estate Services shall assist the District of Columbia Public Schools in selecting real property for the facility and the Office of Public Education Facilities Modernization shall convert the real property into the facility.

(d) On or before December 31 of each year until the project is completed, the District of Columbia Public Schools, in consultation with the Department of General Services, shall issue a report to the Mayor, the Council, and the Healthy Schools and Youth Commission documenting progress on the development of the central kitchen.

(July 27, 2010, D.C. Law 18-209, § 204, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(f), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37 added subsec. (d).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(f) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of section, see § 4062(d) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(d) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-822.05. Public disclosure.

(a) Food service providers shall provide the following information to public schools, public charter schools, and participating private schools:

(1) The menu for each breakfast and lunch meal served;

(2) The nutritional content of each menu item;

(3) The ingredients for each menu item; and

(4) The location where fruits and vegetables served in schools are grown and processed and whether growers are engaged in sustainable agriculture practices.

(b)(1) Public schools, public charter schools, and participating private schools shall post the information provided to them under subsection (a) of this section:

(A) In the school's office; and

(B) Online if the school has a website.

(2) Public schools, public charter schools, and participating private schools shall inform families that vegetarian food options and milk alternatives are available upon request.

(c) This section shall apply as of January 1, 2012.

(July 27, 2010, D.C. Law 18-209, § 205, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(g), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37, in subsec. (a), substituted “public schools, public charter schools, and participating private schools” for “public schools, public charter schools, and participating private schools”; in subsecs. (b)(1) and (2), substituted “Public schools, public charter schools, and participating private schools” for “Public schools, public charter schools, and participating private schools”; and added subsec. (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(g) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of section, see § 4062(e) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(e) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-822.06. Healthy vending, fundraising, and prizes in public schools.

(a) Except as provided by subsection (b) of this section, all beverages and snack foods provided by or sold in public schools, public charter schools, and participating private schools or provided by organizations participating in the Afterschool Meal Program, whether through vending machines, fundraisers, snacks, after-school meals, or other means, shall meet the requirements of the United States Department of Agriculture's HealthierUS School Challenge program at the Gold Award Level for competitive foods, as may be revised from time to time and notwithstanding any termination of the HealthierUS School Challenge program.

(b) The requirements of subsection (a) of this section shall not apply to:

(1) Food and drinks available only to faculty and staff members; provided, that school employees shall be encouraged to model healthy eating;

(2) Food provided at no cost by parents;

(3) Food sold or provided at official after-school events; and

(4) Adult education programs.

(c) The Office of the State Superintendent of Education may adopt standards that exceed the requirements set forth in subsections (a) and (b) of this section.

(d) Foods and beverages sold in public school, public charter school, and

participating private schools shall meet the requirements of subsection (a) of this section.

(e) Public schools, public charter school, and participating private schools shall not permit third parties, other than school-related organizations and school meal service providers, to sell foods or beverages of any type to students on school property from 90 minutes before the school day begins until 90 minutes after the school day ends.

(f) Foods and beverages that do not meet the nutritional requirements of subsection (a) of this section shall not be:

(1) Used as incentives, prizes, or awards in public schools or public charter schools; or

(2) Advertised or marketed in public schools and public charter schools through posters, signs, book covers, scoreboards, supplies, equipment, or other means.

(g) After first issuing a warning, the Office of the State Superintendent of Education may impose a penalty, not to exceed \$500 per day paid to the Healthy Schools Fund, on public schools and public charter schools that violate this section, subject to the right to a hearing requested within 10 days after the notice of imposition of the penalty is sent.

(July 27, 2010, D.C. Law 18-209, § 206, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(h), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37, in subsec. (a), substituted “public schools, public charter schools, and participating private schools” for “public schools, public charter schools, and participating private schools”; in subsec. (d), substituted “public school, public charter school, and participating private school” for “public school, public charter school, and participating private school”; and, in subsec. (e), substituted “Public schools, public charter schools, and participating private schools” for “Public schools, public charter schools, and participating private schools”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(h) of Healthy Schools Emergency Amendment Act of

2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of section, see § 4062(f) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(f) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-822.07. Triennial review.

The Healthy Schools and Youth Commission shall review school nutrition and the requirements of this title at least every 3 years and recommend improvements to the Mayor and the Council.

(July 27, 2010, D.C. Law 18-209, § 207, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

*Subchapter III. Farm-to-School Program.***§ 38-823.01. Local food sourcing, reimbursement, and education.**

Public schools and public charter schools shall serve locally grown, locally processed, and unprocessed foods from growers engaged in sustainable agriculture practices whenever possible. Preference shall be given to fresh unprocessed agricultural products grown and processed in the District of Columbia, Maryland, and Virginia.

(July 27, 2010, D.C. Law 18-209, § 301, 57 DCR 4779.)

Emergency legislation. — For temporary (90 day) addition of section, see § 4062(g) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section,

see § 4062(g) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-823.02. Programs.

The Office of the State Superintendent of Education shall, in conjunction with the Department of Health, the Department of Parks and Recreation, the District Department of the Environment, the University of the District of Columbia, community organizations, food service providers, public schools, and public charter schools, develop programs to promote the benefits of purchasing and eating locally grown and unprocessed foods that are from growers engaged in sustainable agriculture practices. At minimum, the Office of the State Superintendent of Education shall conduct at least one program per year, such as an annual local flavor week or a harvest of the month program, in collaboration with other District agencies and nonprofit organizations.

(July 27, 2010, D.C. Law 18-209, § 302, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-823.03. Mandatory reporting.

On or before September 30 of each year, the Office of the State Superintendent of Education shall submit to the Mayor, the Council, and the Healthy Schools and Youth Commission a comprehensive report on the District's farm-to-school initiatives and recommendations for improvement.

(July 27, 2010, D.C. Law 18-209, § 303, 57 DCR 4779.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 4062(h) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(h) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Subchapter IV. Physical and Health Education.

§ 38-824.01. Physical activity goals.

(a) It shall be the goal of the District of Columbia for children to engage in physical activity for 60 minutes each day.

(b) Public schools and public charter schools shall promote this goal.

(c) Public schools and public charter schools shall seek to maximize physical activity by means including:

- (1) Extending the school day;
- (2) Encouraging students to walk or bike to school;
- (3) Promoting active recess;
- (4) Including physical activity in after-school activities;
- (5) Supporting athletic programs; and
- (6) Integrating movement into classroom instruction.

(July 27, 2010, D.C. Law 18-209, § 401, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-824.02. Physical and health education requirements.

(a) Public schools and public charter schools shall provide physical education as follows:

(1) For students in Kindergarten through Grade 5:

(A) School years 2010-2011 to 2013-2014: an average of at least 30 minutes per week or the same level of physical education as provided in school year 2009-2010, whichever is greater; and

(B) School year 2014-2015 and after: an average of at least 150 minutes per week;

(2) For students in Grades 6 through 8:

(A) School years 2010-2011 to 2013-2014: an average of at least 45 minutes per week or the same level of physical education as provided in school year 2009-2010, whichever is greater; and

(B) School year 2014-2015 and after: an average of at least 225 minutes per week.

(3) At least 50% of physical education class time shall be devoted to actual physical activity, with as much class time as possible spent in moderate-to-vigorous physical activity.

(b) Public schools and public charter schools shall provide health education to students in Grades Kindergarten through 8 as follows:

(1) School years 2010-2011 to 2013-2014: an average of at least 15 minutes per week or the same level of health education as provided in school year 2009-2010, whichever is greater; and

(2) School year 2014-2015 and after: an average of at least 75 minutes per week;

(c) The State Board of Education, with assistance from the Office of the State Superintendent of Education, shall consider ways to expand physical education in high schools.

(d) The physical education and health education required by this section shall meet the curricular standards adopted by the State Board of Education.

(July 27, 2010, D.C. Law 18-209, § 402, 57 DCR 4779.)

Emergency legislation. — For temporary (90 day) addition of section, see § 4062(i) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section,

see § 4062(i) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-824.03. Additional requirements.

(a) A student with disabilities shall have suitably adapted physical education incorporated as part of the individualized education program developed for the student. With a written note from a physician, public schools and public charter schools may provide suitably adapted physical education for any other student with special needs that preclude the student from participating in regular physical education instruction.

(b) Requiring or withholding physical activity shall not be used to punish students; provided, that students who are not wearing appropriate athletic clothing may be prohibited from participating in physical activity until properly dressed.

(July 27, 2010, D.C. Law 18-209, § 403, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-824.04. Access to public facilities.

The Department of Parks and Recreation shall provide equal access and shall charge equal fees to both public schools and public charter schools for the use of its recreation centers, fields, playgrounds, and other facilities.

(July 27, 2010, D.C. Law 18-209, § 404, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-824.05. Mandatory reporting.

Beginning in 2011, on or before September 30 of each year, the Office of the State Superintendent of Education shall report to the Mayor, the Council, and the Healthy Schools and Youth Commission annually regarding:

(1) Compliance of public schools and public charter schools with the physical and health education requirements in this subchapter; and

(2) Student achievement with respect to health and physical education standards.

(July 27, 2010, D.C. Law 18-209, § 405, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Subchapter V. Environment.

§ 38-825.01. Environmental programs office.

(a)(1) An environmental programs office is established in the Office of Public Education Facilities Modernization and shall:

(A) Contract with vendors to recycle all materials required by District law at all public schools, including food services, by December 31, 2010, and provide technical assistance to public charter schools about recycling.

(B) Develop a master recycling plan for public schools on or before December 31, 2011 to reach a system-wide diversion rate of 45% by August 1, 2015;

(C) Analyze utility usage at each public school and develop a plan to reduce that amount by 20% on or before August 1, 2015;

(D) Establish an integrated pest management program;

(E) Test drinking water in public schools for lead and promptly take any remedial action required;

(F) Comply with the Environmental Protection Agency's Lead; Renovation, Repair, and Painting Program, established by 40 C.F.R. Part 745;

(G) Post the results of its environmental testing online;

(H) Promote the Environmental Protection Agency's Indoor Air Quality Tools for Schools Program to reduce exposure to environmental factors that impact asthma among children and adults in public schools; and

(I) Develop an electronic recycling policy for public schools on or before December 31, 2011.

(2) The contracts under paragraph (1)(A) of this subsection shall be negotiated to provide a financial incentive to reduce the amount of waste created in public schools and, when possible, to increase diversion rates in public schools;

(b) The District of Columbia Public Schools shall:

(1) Use environmentally friendly cleaning supplies in public schools; provided, that the agency may exhaust its current supply of conventional cleaners; and

(2) Prepare and transmit to the Mayor, the Council, and the Healthy Schools and Youth Commission, on or before December 31, 2010, a plan to use sustainable products in serving meals to students.

(c) On or before December 31, 2011, the Mayor shall prepare and transmit to the Council a comprehensive report describing the implementation of recycling, composting, energy-reduction, pest management, air quality, and environmentally friendly cleaning supplies programs in public schools. The report shall include:

(1) A thorough, school-by-school breakdown of the waste stream in public schools, including tonnages, components, and diversion rates;

(2) Baseline energy usage, an analysis of usage patterns, and savings achieved;

(3) Recommendations and a timeline for further implementing these programs; and

(4) A proposal for recognizing and rewarding schools that significantly improve their environmental portfolio.

(July 27, 2010, D.C. Law 18-209, § 501, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(i), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37, in subsec. (a)(1), substituted “December 31, 2011” for “December 31, 2010” in subpar. (B), deleted “and” from the end of subpar. (G), substituted “; and” for a period the end of subpar. (H), and added subpar. (I); and, in subsec. (c), substituted “December 31, 2011” for “December 31, 2010”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(i) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of sec-

tion, see § 4062(j) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(j) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-825.02. Environmental literacy plan.

(a) The District Department of the Environment, in conjunction with the District of Columbia Public Schools, the Department of Parks and Recreation, the Public Charter School Board, the Office of the State Superintendent of Education, the State Board of Education, and the University System of the District of Columbia, shall develop an environmental literacy plan for public schools and public charter schools.

(b) The environmental literacy plan shall, at minimum, describe the following:

(1) Relevant teaching and learning standards adopted by the State Board of Education;

(2) Professional development opportunities for teachers;

(3) How to measure environmental literacy;

(4) Governmental and nongovernmental entities that can assist schools; and

(5) Implementation of the plan.

(c) The District Department of the Environment shall transmit the environmental literacy plan to the Mayor and the Council by June 30, 2012.

(July 27, 2010, D.C. Law 18-209, § 502, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(j), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37 designated the existing text as subsec. (a); and added subsecs. (b) and (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(j) of

Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-825.03. School Gardens Program.

(a) A School Gardens Program is established within the Office of the State Superintendent of Education. The School Gardens Program shall:

(1) Coordinate the efforts of community organizations, the Department of Parks and Recreation, the District Department of the Environment, the District of Columbia Public Schools, the Office of Public Education Facilities, the Public Charter School Board, and the University System of the District of Columbia to establish gardens as integral components of public schools and public charter schools;

(2) Complement the Food Production and Urban Gardens Program, established by § 48-402;

(3) Establish and convene a Garden Advisory Committee, composed of community organizations, District government agencies, and other interested persons;

(4) Collect data on the location and types of gardens in public schools and public charter schools;

(5) Provide horticultural guidance and technical assistance to public schools and public charter schools;

(6) Coordinate curricula for school gardens and related projects;

(7) Provide training, support, and assistance to gardens in public schools and public charter schools; and

(8) Assist public schools and public charter schools in receiving certification as U.S. Department of Education Green Ribbon Schools.

(b) On or before June 30, 2012, the School Gardens Program shall issue a report to the Mayor, the Council, and the Healthy Schools and Youth Commission about the state of school gardens in the District of Columbia, plans for expanding them, and recommendations for improving the program.

(c) The University of the District of Columbia shall assist the School Gardens Program by providing technical expertise, curricula, and soil testing for school gardens.

(d) As permitted by federal law, when tests show that the soil is safe and when produce is handled safely, produce grown in school gardens may be identified and served to students at the school, including in the cafeteria. Produce grown in school gardens may be sold and the proceeds from such sales shall be expended for the benefit of the public school where the produce was grown.

(e) School gardens shall include a demonstration compost pile when feasible.

(July 27, 2010, D.C. Law 18-209, § 503, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(k), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37, in subsec. (a), deleted “and” from the end of par. (6), substituted “; and” for a period the end of par. (7), and added par. (8); and, in subsec. (b), substituted “June 30, 2012” for “June 30, 2011”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(k) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of section, see § 4062(k) of Fiscal Year 2013 Budget

Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(k) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

Subchapter VI. Health and Wellness.

§ 38-826.01. Local wellness policies.

(a) As required by federal law, each local educational agency shall collaborate with parents, students, food service providers, and community organizations to develop, adopt, and update a comprehensive local wellness policy. Local wellness policies shall be revised at least once every 3 years.

(b) Local wellness policies shall include:

(1) The requirements set forth in federal law; and

(2) Goals for:

(A) Improving the environmental sustainability of schools;

(B) Increasing the use of locally grown, locally processed, and unprocessed foods from growers engaged in sustainable agriculture practices; and

(C) Increasing physical activity.

(c) Public schools and public charter schools shall promote their local wellness policy to faculty, staff, parents, and students. A copy shall be:

(1) Posted on each school’s website, if it has one;

(2) Distributed to food service staff members;

(3) Distributed to the school’s parent/teacher organization, if it has one; and

(4) Made available in each school’s office.

(d) The Office of the State Superintendent of Education shall review each local wellness policy to ensure that it complies with federal requirements and shall examine whether schools comply with their policies.

(July 27, 2010, D.C. Law 18-209, § 601, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-826.02. School health profiles.

(a) On or before February 15 of each year, each public school and public charter school shall submit the following information to the Office of the State Superintendent of Education regarding each of its campuses:

(1) Health programs:

(A) Whether the school has full-time, part-time, or no nurse coverage;

(B) The name and contact information of the school’s nurse;

(C) Whether the school has a school-based mental health program or offers similar services on site;

(D) Whether there is a certified or highly qualified health teacher on staff; and

(E) Whether there is a school-based health center;

(2) Nutrition programs:

(A) The name of the school's food service vendor;

(B) Whether the school's meals meet the nutritional standards required by federal and District law;

(C) Where the information required by § 38-822.05 can be found;

(D) Whether the school participates in the farm-to-school program under § 38-823.01;

(E) Whether the school participates in the School Gardens Program under § 38-825.03;

(F) The number of students qualifying for free, reduced-price, and paid meals;

(G) For the most recent November, the average daily participation in the national school breakfast and school lunch programs with breakdowns for the number of free, reduced-price, and paid students participating in school breakfast and lunch programs on an average daily basis;

(H) Whether your school participates in Afterschool Meal Snack and Supper Program and if so, the number of children served snacks and suppers on an average daily basis;

(I) For elementary schools, whether your school participates in the Fresh Fruit and Vegetable Snack Program;

(J) Whether your school participates in D.C. Free Summer Meals Program and if so, the number of breakfasts, lunches, suppers, and snacks served on an average daily basis the preceding summer;

(K) Whether your schools has vending machines and if so, how many vending machines, the hours of operation of said vending machines, and what items are sold from the machines; and

(L) Whether the school has a school store and if so, what food and beverages are sold and the hours of operation;

(3) Physical and health education:

(A) The average amount of weekly physical education that students receive in each grade;

(B) The average amount of weekly health education that students receive in each grade; and

(C) How the school promotes physical activity;

(4) Wellness policy:

(A) Whether the school is in compliance with its local wellness policy; and

(B) Where a copy of the school's local wellness policy can be found.

(b) The Office of the State Superintendent of Education may change the information, as set forth in subsection (a) of this section, to be included in the healthy schools profile form.

(c) On or before January 15 of each year, each public school and public charter school shall post the information required by subsection (a) of this

section online if the school has a website and make the form available to parents in its office.

(d) The Office of the State Superintendent of Education shall post the information required by subsection (a) of this section on its website within 14 days of receipt.

(July 27, 2010, D.C. Law 18-209, § 602, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(l), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37, in the lead-in language of subsec. (a), substituted “February 18” for “January 18”; in subsec. (a)(1)(D), substituted “certified or highly qualified health teacher” for “certified health teacher”; in subsec. (a)(2)(D), deleted “and” from the end; and added subsecs. (a)(2)(F) to (L).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(l) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of sec-

tion, see § 4062(m) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(m) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-826.03. School health centers.

(a) The Department of Health, in conjunction with the Department of Healthcare Finance, the District of Columbia Public Schools, the Office of Public Education Facilities Modernization, and the Public Charter School Board, shall develop a plan to establish and operate school health centers in public schools and public charter schools on or before December 31, 2015.

(b) The plan shall include the following:

(1) A needs assessment to determine where school health centers shall be located, including a justification for any determination that a school health center is not needed at a public high school; and

(2) A proposal for financial sustainability for the school health centers.

(c) The plan shall be submitted to the Mayor, the Council, and the Healthy Schools and Youth Commission on or before December 31, 2011.

(July 27, 2010, D.C. Law 18-209, § 603, 57 DCR 4779; Oct. 20, 2011, D.C. Law 19-37, § 2(m), 58 DCR 6841.)

Effect of amendments. — D.C. Law 19-37, in subsec. (c), substituted “December 31, 2011” for “December 31, 2010”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(m) of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

For temporary (90 day) amendment of section, see § 4062(l) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4062(l) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

§ 38-826.04. **School nurses.**

The square footage of a nurse's suite shall not be a determining factor as to whether or not a school nurse is placed at a public charter school; provided, that all other conditions as required by the Department of Health are met.

(July 27, 2010, D.C. Law 18-209, § 604, 57 DCR 4779.)

Emergency legislation. — For temporary (90 day) addition of section, see §§ 2(n), 3 of Healthy Schools Emergency Amendment Act of 2011 (D.C. Act 19-143, August 9, 2011, 58 DCR 6814).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-826.05. **Tobacco-free school campuses.**

(a) Tobacco and tobacco products are prohibited in public school and public charter school buildings, grounds, parking lots, parking garages, playing fields, school buses and other vehicles, and at off-campus, school-sponsored events.

(b) For a public charter school located in a mixed-use facility, the requirements of subsection (a) of this section shall apply only to the buildings, grounds, parking lots, garages, and fields under the control of the public charter school.

(July 27, 2010, D.C. Law 18-209, § 604a, as added Oct. 20, 2011, D.C. Law 19-37, § 2(n), 58 DCR 6841.)

Legislative history of Law 19-37. — For history of Law 19-37, see notes under § 38-821.01.

Editor's notes. — Section 3 of D.C. Law 19-37 provided: "Sec. 3. Applicability. This act shall apply as of August 15, 2011."

Subchapter VII. Healthy Youth and Schools Commission.

§ 38-827.01. **Establishment of the Healthy Youth and Schools Commission.**

(a) There is established the Healthy Youth and Schools Commission with the purpose of advising the Mayor and the Council on health, wellness, and nutritional issues concerning youth and schools in the District, including:

- (1) School meals;
- (2) Farm-to-school programs;
- (3) Physical activity and physical education;
- (4) Health education;
- (5) Environmental programs;
- (6) School gardens;
- (7) Sexual health programming;
- (8) Chronic disease prevention;
- (9) Emotional, social, and mental health services;
- (10) Substance abuse; and
- (11) Violence prevention.

(b) Specific functions of the Commission shall include the following:

(1) Advising on the operations of all District health, wellness, and nutrition programs;

(2) Reviewing and advising on the best practices in health, wellness, and nutrition programs across the United States;

(3) Recommending standards, or revisions to existing standards, concerning the health, wellness, and nutrition of youth and schools in the District;

(4) Advising on the development of an ongoing program of public information and outreach programs on health, wellness, and nutrition;

(5) Making recommendations on enhancing the collaborative relationship between the District government, the federal government, the University of the District of Columbia, local nonprofit organizations, colleges and universities, and the private sector in connection with health, wellness, and nutrition;

(6) Identifying gaps in funding and services, or methods of expanding services to District residents; and

(7) Engaging students in improving health, wellness, and nutrition in schools.

(c) On or before September 30 of each year, the Commission shall submit to the Mayor and the Council a comprehensive report on the health, wellness, and nutrition of youth and schools in the District. The report shall:

(1) Explain the efforts made within the preceding year to improve the health, wellness, and nutrition of youth and schools in the District;

(2) Discuss the steps that other states have taken to address the health, wellness, and nutrition of youth and schools; and

(3) Make recommendations about how to further improve the health, wellness, and nutrition of youth and schools in the District.

(July 27, 2010, D.C. Law 18-209, § 701, 57 DCR 4779.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 4062(n) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of sec-

tion, see § 4062(n) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-827.02. Composition and organization of the Commission.

(a) The Commission shall be composed of 13 members who are experts in health, wellness, or nutrition; parents; teachers; or students. The Mayor shall appoint 10 members, no more than 5 of whom shall represent District agencies. The Chairman of the Council shall appoint one member. The chair of the Council committee with oversight of education shall appoint one member. The Chair of the Public Charter School Board shall appoint one member.

(b) Members shall serve 3-year terms on the Commission, except that:

(1) Of the Mayor's first 10 persons appointed, 4 shall be appointed to serve 3-year terms, 3 shall be appointed to serve 2-year terms, and 3 shall be appointed to serve one-year terms; and

(2) Students shall serve for one year.

(c) The Mayor shall designate one member of the Commission to serve as its Chairperson.

(d) A member shall serve for no more than 2 consecutive, full terms.

(e) Unless excused by the Chairperson, any member who fails to attend 3 consecutive meetings shall be deemed to be removed from the Commission, creating a vacancy.

(f) Each member of the Commission shall serve without compensation; provided, that each member may be reimbursed for actual expenses pursuant to § 1-611.08.

(July 27, 2010, D.C. Law 18-209, § 702, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-827.03. Rules of procedure.

(a) The Chairperson of the Commission, or his or her designated representative, who shall be a member of the Commission, shall convene all meetings of the Commission. Seven members of the Commission shall constitute a quorum. Voting by proxy shall not be permitted.

(b) All meetings, reports, and recommendations shall be a matter of public record.

(c) The Commission shall establish its meeting schedule; provided, that the Commission shall meet at least 4 times during each calendar year.

(d) The Commission may establish subcommittees as needed. Subcommittees may include persons who are not members of the Commission; provided, that each subcommittee shall be chaired by a Commission member.

(July 27, 2010, D.C. Law 18-209, § 703, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-827.04. Administration.

Subject to appropriations, the Office of the State Superintendent of Education shall provide administrative and technical support to the Commission as necessary.

(July 27, 2010, D.C. Law 18-209, § 704, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Subchapter VIII. Rules and Applicability.

§ 38-828.01. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter.

(July 27, 2010, D.C. Law 18-209, § 801, 57 DCR 4779.)

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

§ 38-828.02. Applicability.

(a) Subchapter II of this chapter shall apply as of August 1, 2010.

(b) Repealed.

(July 27, 2010, D.C. Law 18-209, § 802, 57 DCR 4779; Sept. 24, 2010, D.C. Law 18-223, § 7005, 57 DCR 6242.)

Effect of amendments. — D.C. Law 18-223 repealed subsec. (b), which had read as follows: “(b) This chapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.”

Emergency legislation. — For temporary (90 day) repeal of section 802(b) of D.C. Law

18-209, see § 7005 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-209. — For Law 18-209, see notes following § 38-821.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

CHAPTER 9. MISCELLANEOUS PROVISIONS.

Sec.	Sec.
38-901. Whole school-day sessions.	38-913. Subsistence and transportation of children with disabilities.
38-902. School officials not to profit on supplies or textbooks purchased for schools.	38-914. Ceremonial expenses.
38-903. Repair work by janitors.	38-915. Official expenses.
38-904. School name changes.	38-916. Funding of public schools — Declaration of policy.
38-905. John A. Chamberlain Vocational School.	38-917. Funding of public schools — Public hearings.
38-906. Title and jurisdiction over reservation 277-F transferred for school purposes; authority to close streets and alleys.	38-918. Written procedures for evaluating facilities needs.
38-907. Acceptance by Board of Education of donations.	38-919. Community input and demographic analysis in annual capital request.
38-908. Bond not required for supplies issued by Department of the Army.	38-920. Aeronautics courses authorized.
38-909. Insurance for arms issued to high school cadets.	38-921. Teachers of aeronautics.
38-910. Solicitation of donations from pupils.	38-922. Free textbooks, maps, and supplies.
38-911. Restriction on use of appropriations.	38-923. [Repealed].
38-912. Driver education program; police officer and firefighter cadet programs.	38-924. Established; functions; duties; Director; advisory board.
38-912.01. Issuance of rules for programs established pursuant to § 38-912.	38-925. Working capital fund; rules and regulations.
	38-926. Termination.
	38-927 to 38-938. [Repealed].

§ 38-901. Whole school-day sessions.

All children of school age being instructed in the schools of the District beyond the 2nd grade shall be given a whole school-day session.

(June 20, 1906, 34 Stat. 316, ch. 3446, § 1.)

Prior Codifications. — 1981 Ed., § 31-2201. 1973 Ed., § 31-1101.

§ 38-902. School officials not to profit on supplies or textbooks purchased for schools.

No school official, teacher, or member of the Board of Education shall receive any pecuniary benefit on account of school supplies or textbooks purchased for the use of the public schools in the District of Columbia.

(Aug. 7, 1894, 28 Stat. 254, ch. 232.)

Cross references. — Purchase of school books and supplies, see § 38-701 et seq. 1973 Ed., § 31-1104.

Prior Codifications. — 1981 Ed., § 31-2202.

§ 38-903. Repair work by janitors.

The janitors of the principal school buildings, in addition to their other duties, shall do all minor repairs to buildings and furniture, glazing, fixing

seats and desks, and take care of the heating apparatus, and shall be selected with reference to their qualifications to perform this work.

(Feb. 25, 1885, 23 Stat. 318, ch. 145.)

Cross references. — Control of construction and repair of school buildings, see § 38-402.

Prior Codifications. — 1981 Ed., § 31-2203.

1973 Ed., § 31-1105.

§ 38-904. School name changes.

(a) The school formerly known as the M Street High School (old) shall be known as Robert Gould Shaw Junior High School.

(b) The school formerly known as Central High School (old) and annex shall be known as Columbia Junior High School.

(June 29, 1922, 42 Stat. 689, ch. 249.)

Prior Codifications. — 1981 Ed., § 31-2204.

1973 Ed., § 31-1106.

§ 38-905. John A. Chamberlain Vocational School.

The new school building built to replace the Lenox Vocational School shall, when occupied, be known as the John A. Chamberlain Vocational School.

(July 15, 1939, 53 Stat. 1016, ch. 281, § 1.)

Prior Codifications. — 1981 Ed., § 31-2205.

1973 Ed., § 31-1107.

§ 38-906. Title and jurisdiction over reservation 277-F transferred for school purposes; authority to close streets and alleys.

Title to and jurisdiction over reservation 277-F, being part of square 3526, are transferred to the District of Columbia, the said reservation to be included in the site acquired or to be acquired for the McKinley Technical High School; and the Council of the District of Columbia is hereby authorized and directed to close all streets and alleys in the area acquired or to be acquired for the McKinley Technical High School and the Langley Junior High School buildings and grounds, where title to the property on both sides of any such streets or alleys shall be in the District of Columbia, the title to the land in such streets or alleys so closed to revert to the District of Columbia for school purposes.

(Mar. 4, 1925, 43 Stat. 1320, ch. 556.)

Prior Codifications. — 1981 Ed., § 31-2206.

1973 Ed., § 31-1108.

§ 38-907. Acceptance by Board of Education of donations.

The Board of Education is authorized to receive any donations or contribu-

tions that may be made for the benefit of the public schools of the District of Columbia, and to apply the same in such manner as in their opinion shall be best calculated to effect the object of the donors; the Board of Education to account for all funds so received.

(R.S., D.C., § 283; June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Oct. 30, 1975, D.C. Law 1-26, § 3, 22 DCR 2467.)

Prior Codifications. — 1981 Ed., § 31-2207.

1973 Ed., § 31-1109.

Legislative history of Law 1-26. — Law 1-26 was introduced in Council and assigned Bill No. 1-52, which was referred to the Committee on the Judiciary and the Committee on

Criminal Law. The Bill was adopted on first and second readings on July 1, 1975, and July 15, 1975, respectively. Signed by the Mayor on August 4, 1975, it was assigned Act No. 1-38 and transmitted to both Houses of Congress for its review.

§ 38-908. Bond not required for supplies issued by Department of the Army.

On and after July 1, 1943, a bond shall not be required on account of military supplies or equipment issued by the Department of the Army for military instruction and practice by the students of high schools in the District of Columbia.

(July 15, 1939, 53 Stat. 1015, ch. 281, § 1; June 12, 1940, 54 Stat. 317, ch. 333, § 1; July 1, 1943, ch. 184, § 1.)

Prior Codifications. — 1981 Ed., § 31-2208.

1973 Ed., § 31-1115.

§ 38-909. Insurance for arms issued to high school cadets.

Arms authorized to be issued by the Department of the Army to high school cadets of the District of Columbia shall hereafter be issued without requiring that the same shall be insured from loss by fire.

(April 27, 1904, 33 Stat. 379, ch. 1628.)

Prior Codifications. — 1981 Ed., § 31-2209.

1973 Ed., § 31-1116.

§ 38-910. Solicitation of donations from pupils.

No part of any appropriation for the District of Columbia shall be paid to any person employed under or in connection with the public schools of the District of Columbia who shall solicit or receive, or permit to be solicited or received, on any public school premises, any subscription or donation of money or other thing of value from any pupil enrolled in such public schools for presentation of testimonials to school officials or for any purpose except such as may be authorized by the Board of Education at a stated meeting upon the written recommendation of the Superintendent of Schools.

(July 1, 1943, 57 Stat. 324, ch. 184, § 1.)

Prior Codifications. — 1981 Ed., § 31-2210. 1973 Ed., § 31-1117.

§ 38-911. Restriction on use of appropriations.

No funds appropriated for the government of the District of Columbia may be used:

(1) To provide transportation for students enrolled in the public schools of the District of Columbia if the transportation is provided solely to change the racial balance in any public school in the District of Columbia; or

(2) For the cost of education (including the cost of transportation) of any individual in an elementary or secondary school located outside the District of Columbia, except:

(A) Any individual with a disability for whom education facilities do not exist in the public school system of the District of Columbia; and

(B) Any individual under the care, custody, or guardianship of the District of Columbia placed in a foster home or in an institution located outside the District of Columbia.

(Aug. 2, 1968, 82 Stat. 615, Pub. L. 90-450, title IV, § 401; Apr. 24, 2007, D.C. Law 16-305, § 52, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 31-2211.

1973 Ed., § 31-1118.

Effect of amendments. — D.C. Law 16-305, in par. (2)(A), substituted “individual with a disability” for “handicapped individual”.

Legislative history of Law 16-305. — Law 16-305, the “People First Respectful Language Modernization Act of 2006”, was introduced in

Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

CASE NOTES

ANALYSIS

In general.

Injunctive relief.

Validity.

—Equal protection, validity.

—In general.

In general.

Fact that Congress authorizes the District of Columbia to educate some handicapped and foster children outside the District does not require that Congress authorize a program of general or limited racial integration between schools of the District and schools of adjacent states. D.C. Code § 31-1118(2); U.S. Const. Amend. 5. *Bulluck v. Washington*, 468 F.2d 1096, 1972 U.S. App. LEXIS 11772 (C.A.D.C. 1972).

Claim that court’s statement, in District of Columbia school desegregation case, that the segregation plan should anticipate cooperation with suburban schools amounted to an order to

utilize the suburbs in desegregating schools and that the District was not complying should, in the first instance, be directed to court which issued order rather than raised in suit challenging constitutionality of statute barring use of funds appropriate for the District to educate an individual in an elementary or secondary school located outside the District. D.C. Code § 31-1118(1, 2). *Bulluck v. Washington*, 468 F.2d 1096, 1972 U.S. App. LEXIS 11772 (C.A.D.C. 1972).

Injunctive relief.

On appeal from dismissal of complaints attacking constitutionality of District of Columbia statute generally prohibiting expenditure of District funds for the cost of education of any individual outside the District, injunction, pending decision of the appeal on the merits, to prevent District’s board of education from discontinuing program whereby a few randomly selected Negro children had been enrolled in a predominantly white suburban Maryland ele-

mentary school at the expense of the District would not be warranted where the record demonstrated that discontinuance of the program, which had been financed by Federal Impact Aid Funds unaffected by the statutory prohibition, had been decided on for reasons unrelated to the statute. D.C. Code § 31-1118(2); 20 U.S.C. § 236 et seq.; Fed.Rules App.Proc. rule 8(a), 18 U.S.C. Bulluck v. Washington, 452 F.2d 1385, 1971 U.S. App. LEXIS 7309 (C.A.D.C. 1971).

Validity.

— Equal protection, validity.

Fact that because 95% of students in District of Columbia public school system are Black, effect of statute prohibiting use of funds appropriated for District to educate, with two exceptions, any individual in an elementary or secondary school located outside the District may be to place a special burden on District children seeking educational integration does not raise a substantial claim of violation of equal protection, since the constitutional unit of equality is the District itself. D.C. Code § 31-1118(2); U.S. Const. Amend. 5. Bulluck v. Washington, 468 F.2d 1096, 1972 U.S. App. LEXIS 11772 (C.A.D.C. 1972).

Statute providing that, except in case of foster children already outside the District of Columbia and those handicapped children for whom educational facilities do not exist in public school systems of the District, no funds appropriated for the District may be used for cost of education, including cost of transportation, of any individual in an elementary or secondary school located outside the District does not deny equal protection to Black pupils seeking racial integration between schools of the District and schools of adjacent states;

statutory classification is reasonable since Congress could rationally decide that special situation in which the two excepted classes found themselves warranted expenditure of funds necessary to provide for their education. D.C. Code § 31-1118(2); U.S. Const. Amend. 5. Bulluck v. Washington, 468 F.2d 1096, 1972 U.S. App. LEXIS 11772 (C.A.D.C. 1972).

Although the District of Columbia is not obliged to provide any students with an extra-territorial education, it must do so for all equally if it chooses to do so for any; the District does so equally within meaning of the Constitution if it has a rational basis for distinguishing between those whom it educates outside the District and those whom it does not. U.S. Const. Amend. 5. Bulluck v. Washington, 468 F.2d 1096, 1972 U.S. App. LEXIS 11772 (C.A.D.C. 1972).

— In general.

Fact that provision forbidding use of funds appropriated for District of Columbia to educate any individual in an elementary or secondary school outside the District was inserted within five days after plan inviting enrollment of District children in Maryland schools was approved by respective school boards and publicly announced and that the section appeared in context of an "anti-busing" provision and that report accompanying section to legislative floor made it plain that section was aimed at eliminating plan, did not provide basis for invalidating statute, otherwise valid on its face, on ground that purpose was to impede racial segregation. U.S. Const. Amendments. 5, 14; D.C. Code § 31-1118(1, 2). Bulluck v. Washington, 468 F.2d 1096, 1972 U.S. App. LEXIS 11772 (C.A.D.C. 1972).

§ 38-912. Driver education program; police officer and firefighter cadet programs.

(a) The Board of Education is authorized, within the limits of appropriations therefor, to accept, on a loan basis, and to maintain and provide for insurance of motor vehicles, for use in the driver education programs of the public schools.

(b) There may be appropriated the funds necessary for the administration of comprehensive programs, established in consultation with the Chief of the Metropolitan Police Department and the Chief of the District of Columbia Fire Department, to train and educate students in the public schools to become police officers or firefighter cadets, which funds shall be available for transfer to the Board of Education at the request of the Board, should the Board determine that it will conduct these programs in the public schools.

(c) A student who is a resident of the District of Columbia and who successfully completes a curriculum established pursuant to this section shall be accorded a preference rating which shall be taken into consideration if the

student applies for appointment to either the Metropolitan Police Department cadet program or the District of Columbia Fire Department cadet program.

(Oct. 26, 1973, 87 Stat. 508, Pub. L. 93-140, § 20; Mar. 9, 1983, D.C. Law 4-172, § 3, 29 DCR 5745.)

Section references. — This section is referred to in § 38-912.01.

Prior Codifications. — 1981 Ed., § 31-2212.

1973 Ed., § 31-1119.

Legislative history of Law 4-172. — Law 4-172, “Police Officer and Firefighter Cadet Program Funding Authorization and Human Rights Act of 1977 Amendment Act of 1982,”

was introduced in Council and assigned Bill No. 4-421, which was referred to the Committee on the Judiciary and the Committee on Education. The Bill was adopted on first and second readings on October 19, 1982, and November 16, 1982, respectively. Signed by the Mayor on December 8, 1982, it was assigned Act No. 4-254 and transmitted to both Houses of Congress for its review.

§ 38-912.01. Issuance of rules for programs established pursuant to § 38-912.

The Board of Education may issue rules necessary for the implementation and operation of programs of education and training as may be established by the Board pursuant to § 38-912.

(Mar. 9, 1983, D.C. Law 4-172, § 5, 29 DCR 5745.)

Prior Codifications. — 1981 Ed., § 31-2212.1.

Legislative history of Law 4-172. — For

legislative history of D.C. Law 4-172, see Historical and Statutory Notes following § 38-912.

§ 38-913. Subsistence and transportation of children with disabilities.

The Board of Education is authorized to provide for the furnishing of subsistence supplies and transportation for children with severe disabilities attending special education schools or classes established for their benefit in the public school system of the District of Columbia.

(Oct. 26, 1973, 87 Stat. 508, Pub. L. 93-140, § 21; Apr. 24, 2007, D.C. Law 16-305, § 53, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 31-2213.

1973 Ed., § 31-1120.

Effect of amendments. — D.C. Law 16-305, in the section heading, substituted “children with disabilities” for “handicapped chil-

dren”; and substituted “children with severe disabilities” for “severely handicapped children”.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 38-911.

§ 38-914. Ceremonial expenses.

The President of the Federal City College, the President of the Washington Technical Institute, the President of the District of Columbia Teachers College, and the Superintendent of Schools are hereby authorized to utilize moneys appropriated for the purposes of this section for such expenses as they may respectively deem necessary to conduct such official ceremonial, and gradua-

tion activities as are normally associated with the programs of educational institutions.

(Oct. 26, 1973, 87 Stat. 508, Pub. L. 93-140, § 24.)

Prior Codifications. — 1981 Ed., § 31-2214. 1973 Ed., § 31-1121.

§ 38-915. Official expenses.

The Mayor of the District of Columbia, the Chairman and members of the Council of the District of Columbia, the Chief Judge of the District of Columbia Court of Appeals, the Chief Judge of the Superior Court of the District of Columbia, the Executive Officer of the District of Columbia Court System, the Superintendent of Schools, the City Administrator, the Director of the District of Columbia Public Library, and the Chief Executive Officer of the University of the District of Columbia are authorized to provide for the expenditure, within the limits of specified annual appropriation, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section.

(Oct. 26, 1973, 87 Stat. 509, Pub. L. 93-140, § 26; Sept. 23, 1978, D.C. Law 2-111, § 2, 25 DCR 1462; Oct. 24, 1981, D.C. Law 4-46, § 2, 28 DCR 4271; Jan. 26, 1982, D.C. Law 4-61, § 7, 28 DCR 4771.)

Prior Codifications. — 1981 Ed., § 31-2215. 1973 Ed., § 31-1122.

Legislative history of Law 2-111. — Law 2-111 was introduced in Council and assigned Bill No. 2-334, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-46. — Law 4-46 was introduced in Council and assigned Bill No. 4-202, which was referred to the Committee on Human Services. The Bill was ad-

opted on first, first amended and second readings on June 16, 1981, June 30, 1981 and July 14, 1981, respectively. Signed by the Mayor on August 6, 1981, it was assigned Act No. 4-81 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-61. — Law 4-61 was introduced in Council and assigned Bill No. 4-264, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on September 15, 1981 and September 29, 1981, respectively. Signed by the Mayor on October 30, 1981, it was assigned Act No. 4-107 and transmitted to both Houses of Congress for its review.

§ 38-916. Funding of public schools — Declaration of policy.

In recognition of:

(1) The critical importance of high quality public education for all students in the District of Columbia;

(2) The need in District of Columbia public schools for smaller classes and supplemental instructional resources to address the needs of the many students requiring special attention;

(3) The need to attract and retain highly qualified teachers and principals;

(4) The need for District of Columbia public school graduates to possess educational skills that render them competitive with graduates of suburban schools as regards employment and higher education;

(5) The need to restore and repair school facilities throughout the District of Columbia; and

(6) The fact that in recent years the budget for the District of Columbia public schools has increased at a rate substantially below that of almost all other District of Columbia agencies:

IT IS HEREBY DECLARED, that funding of the public schools be acknowledged as of the highest priority of the District of Columbia. This priority status for public education funding will be given due consideration by the District of Columbia Board of Education, the Council of the District of Columbia and the Mayor of the District of Columbia in all future proposals, recommendations, and legislative enactments affecting financial support of the public schools.

(Feb. 17, 1988, D.C. Law 7-68, § 2, 34 DCR 7737.)

Prior Codifications. — 1981 Ed., § 31-2216.

Legislative history of Law 7-68. — Law 7-68, "District of Columbia Public School Support Initiative of 1986," was submitted to the electors of the District of Columbia on November 3, 1987, as Initiative No. 25. The results of

the voting, certified by the Board of Elections and Ethics on November 17, 1987, were 54,729 for the Initiative and 16,223 against the Initiative. It was assigned Act No. 7-102 after certification and was transmitted to both Houses of Congress for its review on November 23, 1987.

§ 38-917. Funding of public schools — Public hearings.

In furtherance of this declared policy and in order to afford the people of the District of Columbia a full opportunity to express their views on the fiscal needs of the public schools, the following public hearings and transmissions of hearing records are required:

(1) Beginning in fiscal year 2009, by no later than November 30, but prior to the annual submission by the Chancellor of a proposed operating budget to the Mayor of the District of Columbia, and upon 15 days public notice, the Chancellor shall solicit oral and written public input for the purpose of ascertaining the views of the public on programs and levels of public funding to be sought for the public schools. The operating budget proposed by the Chancellor shall, consistent with the public policy declared in this measure, give due consideration to the record established by the testimony and exhibits on the subjects listed in paragraph (4) of this section. The Chancellor shall transmit the record of this testimony to the Mayor of the District of Columbia and to the Council of the District of Columbia at or before the hearings held by them pursuant to paragraphs (2) and (3) of this section.

(2) At least 15 days prior to the Mayor's annual submission of a budget recommendation with respect to the public schools to the Council of the District of Columbia, and upon 15 days public notice, and in accordance with § 38-103), the Mayor of the District of Columbia shall conduct a public hearing for the purpose of soliciting the views of the public on levels of public funding

to be sought for the operation of the public schools. The public schools budget recommendation submitted by the Mayor to the Council of the District of Columbia shall, consistent with the public policy declared in this measure, give due consideration to the record established by the testimony and exhibits on the subjects listed in paragraph (4) of this section. The Mayor shall transmit the record of this hearing to the Council of the District of Columbia at or before the hearing held pursuant to paragraph (3) of this section.

(3) At the public hearings required by § 47-304 [repealed], the Council of the District of Columbia, not more than 30 days or less than 15 days before the adoption of the Budget Request Act, shall solicit testimony and exhibits on the subjects listed at paragraph (4) of this section, and consistent with the public policy declared in this measure shall adopt a budget giving due consideration to the record established by the testimony and exhibits on those subjects.

(4) The hearings required by paragraphs (1), (2) and (3) of this section shall solicit and receive testimony and exhibits on the following subjects:

(A) The current and prospective educational needs of pupils in the District of Columbia public schools, educational programs that can address these needs and support systems needed for safety and efficiency;

(B) The relative levels of support provided in recent years and sought in the current budget requests for the District of Columbia public schools and other agencies of the District of Columbia Government. Particular attention will be placed on the levels of funding provided in the past and sought for agencies such as the Department of Corrections and the Department of Human Services, which must address the problems resulting in part from an educational system that lacks sufficient resources to address fully the needs of all of its students;

(C) The programs and levels of funding supported by the findings of relevant professional studies and commissions; and

(D) The levels of funding for public school systems in surrounding jurisdictions that have reputations for providing high quality education to their students.

(Feb. 17, 1988, D.C. Law 7-68, § 3, 34 DCR 7737; Apr. 20, 1999, D.C. Law 12-264, § 30, 46 DCR 2118; June 12, 2007, D.C. Law 17-9, § 1008, 54 DCR 4102; Mar. 21, 2009, D.C. Law 17-325, § 3, 56 DCR 499; Mar. 25, 2009, D.C. Law 17-353, § 204, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 31-2217.

Effect of amendments. — D.C. Law 17-9 substituted "Chancellor" for "District of Columbia Board of Education" and "Board of Education".

D.C. Law 17-325 rewrote pars. (1) and (2).

D.C. Law 17-353, in par. (2), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3 of Public Schools Hearing Emergency Amendment Act of 2009 (D.C. Act 18-11, February 25, 2009, 56 DCR 1915).

Legislative history of Law 7-68. — For

legislative history of D.C. Law 7-68, see Historical and Statutory Notes following § 38-916.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 17-325. — For Law 17-325, see notes following § 38-103.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

§ 38-918. Written procedures for evaluating facilities needs.

The District of Columbia Public Schools shall develop and submit for Council approval by November 1, 1997, written procedures outlining an ongoing process for evaluating facilities needs, to include:

- (1) Annual community input and deliberations; and
- (2) Annual demographic projections based on census, economic development (which shall include housing starts), and other factors.

(Mar. 20, 1998, D.C. Law 12-60, § 1301, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 31-2218.

Temporary Addition of Section. — Section 1301 of D.C. Law 12-59 added § 31-2218 [1981 Ed.].

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency legislation. — For temporary addition of section, see § 1301 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 1301 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provided for the application of the act.

Legislative history of Law 12-59. — Law 12-59, the “Fiscal Year 1998 Revised Budget Support Temporary Act of 1997,” was intro-

duced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Editor's notes. — Application of Law 12-60: Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 38-919. Community input and demographic analysis in annual capital request.

The District of Columbia Public Schools shall submit annually with its capital request a report that details how the capital request reflects the required community input and demographic analysis.

(Mar. 20, 1998, D.C. Law 12-60, § 1302, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 31-2219.

Temporary Addition of Section. — Section 1302 of D.C. Law 12-59 added § 31-2219 [1981 Ed.].

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Emergency legislation. — For temporary addition of section, see § 1302 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and § 1302 of the Fiscal Year 1998 Revised Budget Support Congressional

Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 38-918.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 38-918.

§ 38-920. Aeronautics courses authorized.

The Board of Education is hereby authorized and directed to establish and to include in the curricula of the senior high schools of the District of Columbia, as an additional optional course, a course in aeronautics, which shall include instruction in aerodynamics, the theory of flight, the airplane and its engine, mechanics, engineering, meteorology, practical air navigation, map reading, and such other allied subjects as the Board in its discretion may deem it advisable to prescribe. Such course shall be 1st offered during the high-school term beginning in 1942. Thereafter such additional courses in aeronautics may be added as deemed desirable by the Board of Education. The same credit toward graduation may be given for said course as is given for other optional courses in said schools.

(Dec. 16, 1941, 55 Stat. 806, ch. 585, § 1.)

Prior Codifications. — 1981 Ed., § 31-901. 1973 Ed., § 31-1201.

§ 38-921. Teachers of aeronautics.

The Board is further authorized to employ a sufficient number of teachers of aeronautics, not to exceed 6, adequately to instruct those pupils who elect to pursue the said course, at the salary rates authorized for teachers in the senior high schools.

(Dec. 16, 1941, 55 Stat. 807, ch. 585, § 2.)

Prior Codifications. — 1981 Ed., § 31-902. 1973 Ed., § 31-1202.

§ 38-922. Free textbooks, maps, and supplies.

The Board shall provide the pupils of the senior high schools, free of charge, with the use of all aeronautical textbooks, maps, and other necessary educational supplies required for said course.

(Dec. 16, 1941, 55 Stat. 807, ch. 585, § 3.)

Prior Codifications. — 1981 Ed., § 31-903. 1973 Ed., § 31-1203.

§ 38-923. Annual estimates of expenses. [Repealed].

Repealed.

(Dec. 16, 1941, 55 Stat. 807, ch. 585, § 5; Sept. 24, 2010, D.C. Law 18-223, § 4036, 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 31-904. 1973 Ed., § 31-1204.

Emergency legislation. — For temporary (90 day) repeal of section, see § 4036 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

§ 38-924. Established; functions; duties; Director; advisory board.

There is hereby established in the municipal government of the District of Columbia the Department of General Services, hereinafter referred to as the "Department," which shall under the direction of the Mayor of the District of Columbia carry out in the District of Columbia the state functions contemplated by § 484(j) and (k) of Title 40, United States Code, and such other duties relating to the distribution of surplus property, or other functions, as the Mayor may in his discretion assign to such Department, and for the purposes of § 484(j), the District of Columbia shall be deemed to be a state. The Mayor is authorized to appoint a Director for such Department and such other personnel as may be necessary with compensation to be fixed in accordance with Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code. The Mayor is also authorized to appoint an advisory board for such Department to be composed of not more than 10 members; provided, that the membership of such board shall include representatives of the tax-supported, tax-exempt, and nonprofit educational institutions in the District of Columbia; and provided further, that the members of such advisory board shall serve without compensation and at the pleasure of the Mayor. Such advisory board may submit reports and recommendations to the Mayor as well as to the Department.

(Aug. 16, 1950, 64 Stat. 450, ch. 720, § 1.)

Prior Codifications. — 1981 Ed., § 31-301. 1973 Ed., § 31-1301.

Editor's notes. — Educational Agency for Surplus Property abolished: The District of Columbia Educational Agency for Surplus Property was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the District of Columbia Educational Agency for Surplus Property including the functions of all officers, employees, and subordinate agencies were transferred to Director of the Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952 and effective September 2, 1952. Reorganization Order No. 18 abolished the District of Columbia Educational Agency for Surplus Property and transferred its functions to the Administrative Services Office created in the Department of General Administration by that Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia

by Reorganization Plan No. 3 of 1967. Reorganization Order No. 18 was revoked by Organization Order No. 3, dated December 13, 1967, and functions relative to education surplus property were assigned to the Administrative Services Office of the Department of General Administration by Part IVA of Organization Order No. 3. Functions stated in Parts IVA and IVD of Organization Order No. 3 were transferred to the Director of the Department of General Services by Commissioner's Order No. 69-96, dated March 7, 1969.

The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

Council's acceptance of plan of operation for surplus federal property: Pursuant to Resolution 6-241, the "District of Columbia Plan of Operation for Surplus Federal Property Acceptance Resolution of 1985," effective July 9,

1985, the Council accepted the permanent plan of operation for disposition of surplus federal property.

Rescission of Old Police Precinct #9 from surplus real estate list: Pursuant to Resolution 6-516, the "Sale of Surplus Real Estate Removal Resolution of 1985," effective January 28, 1986, the Council rescinded its findings regarding the property known as the Old Police Precinct #9, located at 525 9th Street, N.E., which appeared on the surplus real estate list established by Resolution 4-171.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-925. Working capital fund; rules and regulations.

There is hereby authorized to be appropriated from any money in the Treasury to the credit of the District of Columbia not exceeding \$15,000 as a working capital fund for the operation of the Department, which fund shall be used as a permanent revolving fund for all necessary expenses of such Department. There shall be deposited to the credit of such fund such amounts as may be appropriated pursuant to this chapter, together with such amounts as the respective branches of the government of the District of Columbia and the private educational institutions authorized by law to participate in the distribution of surplus property shall pay as fees for services rendered by the Department. The Mayor is authorized to promulgate rules and regulations governing the manner in which the Department shall carry out its duties, including the fixing of reasonable fees to be charged for its services.

(Aug. 16, 1950, 64 Stat. 450, ch. 720, § 2; Aug. 1, 1979, D.C. Law 3-13, § 2, 25 DCR 10563.)

Prior Codifications. — 1981 Ed., § 31-302. 1973 Ed., § 31-1302.

Legislative history of Law 3-13. — Law 3-13 was introduced in Council and assigned Bill No. 3-50, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 8, 1979, and May 22, 1979, respectively. Signed by the Mayor on June 8, 1979, it was assigned Act No. 3-50 and transmitted to both Houses of Congress for its review.

Editor's notes. — Transfer of unexpended balances: Section 7(g) of the Act of June 14, 1980, D.C. Law 3-70, provided for the transfer to the Department of General Services Internal Service Fund, or successor fund established by the Mayor, any unexpended balances in the Educational Surplus Property Fund.

Educational Agency for Surplus Property abolished: See Historical and Statutory Notes following § 38-924.

§ 38-926. Termination.

The authority of the Department and of the advisory board shall terminate upon direction of the Mayor of the District of Columbia and in any event no later than the repeal of § 484(j) and (k) of Title 40, United States Code. Upon such termination, the assets of the Department shall be disposed of as the Mayor may direct.

(Aug. 16, 1950, 64 Stat. 451, ch. 720, § 3.)

Prior Codifications. — 1981 Ed., § 31-303. 1973 Ed., § 31-1303.

Editor's notes. — Educational Agency for Surplus Property abolished: See Historical and Statutory Notes following § 38-924.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-927. Education in Partnership with Technology Corporation established. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 2, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2501.

§ 38-928. Functions. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 3, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2502.

§ 38-929. Private participation. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 4, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2503.

§ 38-930. Board of directors; composition; appointment; term of office; vacancies; quorum. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 5, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

§ 38-931

EDUCATIONAL INSTITUTIONS

Prior Codifications. — 1981 Ed., § 31-2504.

§ 38-931. Powers of the EPTC. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 6, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2505.

§ 38-932. Duties and responsibilities; authorizations; promulgation of rules. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 7, 33 DCR 7188; May 10, 1989, D.C. Law 7-231, § 38, 36 DCR 492; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2506.

§ 38-933. Conflict of interest. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 8, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2507.

§ 38-934. Capitalization. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 9, 33 DCR 7188; Apr. 8, 1992, D.C. Law 9-93, § 2, 39 DCR 1371; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2508.

§ 38-935. Exemption from District of Columbia taxes and assessments. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 10, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2509.

§ 38-936. Annual audit; report. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 11, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2510.

§ 38-937. Employee requirements. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 12, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2511.

§ 38-938. Title to property upon dissolution. [Repealed].

Repealed.

(Feb. 24, 1987, D.C. Law 6-170, § 13, 33 DCR 7188; Apr. 29, 1998, D.C. Law 12-86, § 401(j), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-2512.

SUBTITLE II. PUBLIC EDUCATION — ADULT AND COMMUNITY.

CHAPTER 10. FEES FOR SELECT ADULT, COMMUNITY, AND CONTINUING EDUCATION COURSES.

Sec.

38-1001. Definitions.

38-1002. Fees for select District of Columbia Board of Education adult, commu-

Sec.

nity, and continuing education courses.

38-1003. Accountability for funds received.

§ 38-1001. Definitions.

For purposes of this chapter, the phrase “Select Adult, Community, and Continuing Education Course” means an adult, community, and continuing education course which is either recreational or vocational in nature.

(Mar. 16, 1995, D.C. Law 10-221, § 2, 41 DCR 8047.)

Prior Codifications. — 1981 Ed., § 31-131.

Temporary Addition of Section. — Section 2 of D.C. Law 17-377 added a section to read as follows:

“Sec. 2. Plan to establish evening and weekend adult career technical education programs.

“(a) The Mayor shall develop and present to the Council a plan to establish evening and weekend adult career technical training at the Academy of Construction and Design at Cardozo Senior High School, the Hospitality High School at Roosevelt High School, and the Phelps Architecture, Construction and Engineering High School.

“(b) The plan shall establish a curriculum, framework, and an estimated cost to implement, beginning in the summer of 2009, evening and weekend adult career technical education classes for District residents at the Academy of Construction and Design at Cardozo Senior High School, the Hospitality High School at Roosevelt High School, and the Phelps Architecture, Construction and Engineering High School.”

Section 4(b) of D.C. Law 17-377 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2 of Get DC Residents

Training for Jobs Now Emergency Act of 2008 (D.C. Act 17-649, January 6, 2009, 56 DCR 907).

Legislative history of Law 10-221. — Law 10-221, the “District of Columbia Board of Education Fees for Select Adult, Community, and Continuing Education Courses Act of 1994,” was introduced in Council and assigned Bill No. 10-656, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-358 and transmitted to both Houses of Congress for its review. D.C. Law 10-221 became effective on March 16, 1995.

Legislative history of Law 11-49. — Law 11-49, the “District of Columbia Board of Education Fees for Adult, Community, and Continuing Education Courses Temporary Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-309. The Bill was adopted on first and second readings on June 6, 1995, and June 20, 1995, respectively. Signed by the Mayor on July 6, 1995, it was assigned Act No. 11-91 and transmitted to both Houses of Congress for its review. D.C. Law 11-49 became effective on September 20, 1995.

§ 38-1002. Fees for select District of Columbia Board of Education adult, community, and continuing education courses.

(a) The District of Columbia Board of Education (“Board of Education”) is authorized to charge fees for all adult, community, and continuing education courses, and for employee certification and recertification and certification of

university teacher education programs, provided that no additional fees shall be charged for ongoing courses in Academic Year 1994-1995 and Fiscal Year 1995 until those courses are completed.

(b) The amount which shall be charged with respect to each select adult, community, and continuing education course shall be fixed annually by the Board of Education as the amount necessary to cover the expense of instruction, cost of textbooks and school supplies, and other operating costs associated with each course offered; provided, that such an amount and changes in the amount fixed by this subsection are set by the Board of Education in accordance with § 2-505. Following the final adoption of such amounts, the Board of Education shall transmit a copy to the Mayor and a copy to the Council of the District of Columbia.

(c) All amounts received by the Board of Education under this section shall be paid to the D.C. Treasurer and accounted for in the General Fund as a separate revenue source allocable to provide authority for the offering of select adult, community, and continuing education courses for which fees will be charged.

(d) As part of its fiscal year 1995 Supplemental Budget, the Board of Education shall request that an amount equal to the fees collected and deposited into the General Fund pursuant to this chapter, be appropriated to the Board of Education for the purpose of paying for instructors' salaries, textbooks and supplies, and other operating costs associated with offering select adult, community, and continuing education courses.

(e) Waivers, in whole or in part, of fees for select adult, community, and continuing education courses may be granted by the Board of Education only to District residents, regardless of an individual's or a student's employment status with the Board or the District of Columbia Public Schools.

(Mar. 16, 1995, D.C. Law 10-221, § 3, 41 DCR 8047; March 5, 1996, D.C. Law 11-98, § 1201, 43 DCR 5; Apr. 9, 1997, D.C. Law 11-255, § 55(b), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 31-132.

Legislative history of Law 10-221. — For legislative history of D.C. Law 10-221, see Historical and Statutory Notes following § 38-1001.

Legislative history of Law 11-49. — For legislative history of D.C. Law 11-49, see Historical and Statutory Notes following § 38-1001.

Legislative history of Law 11-78. — For legislative history of D.C. Law 11-78, see Historical and Statutory Notes following § 38-157.

Legislative history of Law 11-98. — For

legislative history of D.C. Law 11-98, see Historical and Statutory Notes following § 38-157.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 38-1003. Accountability for funds received.

The District of Columbia Board of Education shall account for all funds received pursuant to this chapter.

(Mar. 16, 1995, D.C. Law 10-221, § 4, 41 DCR 8047.)

Prior Codifications. — 1981 Ed., § 31-133.
Emergency legislation. — For temporary (90 day) addition of sections, see §§ 2 and 3 of the (D.C. Act 19-408, July 24, 2012, 59 DCR 9130).

Legislative history of Law 10-221. — For legislative history of D.C. Law 10-221, see Historical and Statutory Notes following § 38-1001.

CHAPTER 10A. ADULT TECHNICAL CAREER TRAINING.

Sec.

38-1011.01. Establishment of evening, weekend, and summer adult technical career training program.

38-1011.02. Targeted Program areas.

Sec.

38-1011.03. Instructional expertise in implementation of the Program.

38-1011.04. Sources of funding.

38-1011.05. Rules.

§ 38-1011.01. Establishment of evening, weekend, and summer adult technical career training program.

(a) The Mayor shall establish an evening, weekend, and summer adult technical career training program ("Program") for District residents in partnership with existing technical career training programs within 8 months of March 3, 2010. The Program shall provide technical career training opportunities for adults during evening hours, weekends, and summer months. The Program shall be conducted at the following locations:

- (1) Phelps Architecture, Construction and Engineering High School;
- (2) The Academy for Construction and Design at Cardozo Senior High School; and
- (3) The Hospitality Public Charter High School at Roosevelt High School.

(b) Part of the funding directed to support adult technical career training should be applied to cover the cost of operating these facilities beyond traditional school hours.

(Mar. 3, 2010, D.C. Law 18-111, § 2171, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2171 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2171 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law 18-111, the "Fiscal Year 2010 Budget Support Act of 2009", was introduced in Council and

assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 2170 of D.C. Law 18-111 provided that subtitle R of title II of the act may be cited as the "Get DC Residents Training for Jobs Now Act of 2009".

§ 38-1011.02. Targeted Program areas.

Priority for participation in the Program shall be given to District residents who reside in Neighborhood Investment Plan Target Areas, as described in § 6-1073.

(Mar. 3, 2010, D.C. Law 18-111, § 2172, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2172 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2172 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-1011.01.

§ 38-1011.03. Instructional expertise in implementation of the Program.

(a) The Mayor shall select certain entities to provide technical instruction and expertise to the Program. The entities shall include trade associations, professional groups, unions, nonprofit organizations, and other groups certified to provide adult technical career training.

(b) The University of the District of Columbia shall work in conjunction with the Hospitality Public Charter High School at Roosevelt High School, and in partnership with existing adult technical career training programs, to open the Hospitality Public Charter High School at Roosevelt High School for night, weekend, and summer classes and training as one component of the Program.

(Mar. 3, 2010, D.C. Law 18-111, § 2173, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2173 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2173

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-1011.01.

§ 38-1011.04. Sources of funding.

(a) The Mayor shall apply for grants and additional federal funding that may be available as part of the Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 29 U.S.C. § 9201 et seq.) (“the Act”), to support the Program and may administer funds pursuant to the Act.

(b)(1) To qualify for funding made available pursuant to the Act, agencies, organizations, and other groups that will offer adult technical career training as part of the Program shall be required to create and submit competitive proposals that match current and future employment needs within the District as identified by the Mayor.

(2) Entities that have been previously certified by the Mayor for adult technical career training and who have an established success rate, as determined by the Mayor, shall be exempt from the requirements of paragraph (1) of this subsection.

(c) The Mayor shall apply for grants and additional federal funding that may be available as part of the Carl D. Perkins Career and Technical Education Improvement Act of 2006, approved August 12, 2006 (120 Stat. 683; 20 U.S.C. § 2301 et seq.).

(d) The Mayor shall apply for additional federal funding that may be available for technical career training in the form of competitive grants under the American Recovery and Reinvestment Act of 2009, approved February 17, 2009 (123 Stat. 115; 26 U.S.C. § 1, note).

(Mar. 3, 2010, D.C. Law 18-111, § 2174, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2174 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2174

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-1011.01.

§ 38-1011.05. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

(Mar. 3, 2010, D.C. Law 18-111, § 2175, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2175 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2175

of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-1011.01.

SUBTITLE III. PUBLIC EDUCATION — POST SECONDARY.

CHAPTER 11. PUBLIC HIGHER EDUCATIONAL INSTITUTIONS.

Subchapter I. Federal City College

Sec.

- 38-1101. Definitions.
- 38-1102. Board of Higher Education — Composition; appointment; terms; compensation; removal; liability.
- 38-1103. Board of Higher Education — Powers and duties.
- 38-1104. Board of Higher Education — Facilities.
- 38-1105. Fiscal accountability.
- 38-1106. Appropriations.
- 38-1107. Land-grant colleges.
- 38-1108. Appropriation in lieu of donation of public lands.
- 38-1109. Federal City College and Washington Technical Institute administered as land-grant colleges; appropriations; allocations to Federal Ex-

Sec.

- tension Service of Department of Agriculture.
- 38-1110. Grants to Federal City College and Washington Technical Institute.
- 38-1111. Construction of §§ 38-1107 and 38-1109.
- 38-1112. State consent requirement satisfied.

Subchapter II. Washington Technical Institute

- 38-1121. Definitions.
- 38-1122. Board of Vocational Education — Composition; appointment; compensation; removal; liability.
- 38-1123. Board of Vocational Education — Powers and duties.
- 38-1124. Board of Vocational Education — Facilities.
- 38-1125. Fiscal accountability.

Subchapter I. Federal City College.

§ 38-1101. Definitions.

As used in this subchapter:

(1) The term “Federal City College” means the public college of arts and sciences established pursuant to this subchapter. Such college shall be organized and administered to provide:

(A) A 4-year program in the liberal arts and sciences acceptable toward a bachelor of arts degree, including courses in teacher education;

(B) A 2-year program:

(i) Which is acceptable for full credit toward a bachelor’s degree or for a degree of associate in arts, and which may include courses in business education, secretarial training, and business administration; or

(ii) In engineering, mathematics or the physical and biological sciences which is designed to prepare a student to work as a technician or at a semiprofessional level in engineering, sciences, or other technical fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(C) Educational programs of study as may be acceptable for a master’s degree; and

(D) Courses on an individual, noncredit basis to those desiring to further their education without seeking a degree.

(2) The term “Mayor” means the Mayor of the District of Columbia.

(3) The term “Board” means the Board of Higher Education established in § 38-1102.

(4) The term “Board of Education” means the Board of Education of the District of Columbia established by § 1-204.95 [repealed].

(Nov. 7, 1966, 80 Stat. 1426, Pub. L. 89-791, title I, § 101.)

Prior Codifications. — 1981 Ed., § 31-1401.

1973 Ed., § 31-1601.

References in text. — The Federal City College, referred to throughout this subchapter, has been absorbed into the University of the District of Columbia pursuant to Chapter 12 of this title.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1102. Board of Higher Education — Composition; appointment; terms; compensation; removal; liability.

(a) The Federal City College shall be under the control of a Board of Higher Education, which shall consist of 9 members of whom not less than 5 shall have been residents of the District of Columbia for a period of not less than 3 years immediately prior to their appointments. The members of the Board (including all members appointed to fill vacancies on such Board) shall be appointed by the Mayor. The members of the Board shall select a chairman from among their number. Such members shall be appointed for terms of 3 years; except that the terms of office of the members 1st taking office shall expire, as designated by the Mayor at the time of appointment, 3 at the end of 1 year, 3 at the end of 2 years, and 3 at the end of 3 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term. Members of the Board shall serve without compensation, but may be reimbursed for their travel expenses, including per diem in lieu of subsistence, as authorized by § 5703 of Title 5, United States Code, for persons serving the government without compensation.

(b) The Mayor shall have the power to remove any member of the Board at any time for adequate cause, which relates to his character or to his efficiency as a member, after notice and opportunity for hearing.

(c) The members of the Board shall not be personally liable in damages for any official action of the Board in which such members participate, nor shall they be liable for any costs that may be taxed against them or the Board on account of any such official action by them as members of the Board, but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits against the municipality; nor shall the Board or any of its members be required to give any bond or security for costs or damages on any appeal whatever.

(Nov. 7, 1966, 80 Stat. 1426, Pub. L. 89-791, title I, § 102.)

Cross references. — Abolition of Board of Higher Education, see § 38-1202.08.

Section references. — This section is referred to in §§ 38-1101 and 38-1201.03.

Prior Codifications. — 1981 Ed., § 31-1402.

1973 Ed., § 31-1602.

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 38-1202.08.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Dismissed Federal City College employee was not precluded from maintaining action challenging dismissal on theory that he had failed to timely pursue his administrative remedies by waiting until after criminal charges against him had been dismissed before appealing his removal to the College and District of Columbia Board of Higher Education, where

from very outset District authorities were alerted to circumstances behind employee's dispute with city, and employee, after indictment was dismissed, promptly pursued his administrative remedies and then furnished formal notice of his intention to take case to court. D.C. Code § 12-309. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

§ 38-1103. Board of Higher Education — Powers and duties.

(a) The Board is vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Federal City College;

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Federal City College;

(3) To appoint and compensate, without regard to the civil service laws or Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code, a President for the Federal City College;

(4) To employ and compensate such officers as it determines necessary for the Federal City College and such educational employees for the Federal City College as the President thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to: (A) the civil service laws; (B) Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code (relating to classification of positions in government service); (C) §§ 6301 through 6305 and 6307 through 6311 of Title 5, United States Code (relating to annual and sick leave for federal employees); (D) Chapter 15 and §§ 7324 through 7327 [omitted] of Title 5, United States Code (relating to political activities of government employees); (E) § 3323 and subchapter III of Chapter 83 of Title 5, United States Code (relating to civil service retirement); and (F) §§ 3326, 3501, 3502, 5531, 5532 [repealed], 5533,

and 6303 of Title 5, United States Code (relating to dual pay and dual employment); but the employment and compensation of such officers and educational employees shall be subject to: (i) sections 7902, 8101 through 8138, and 8145 through 8150 of Title 5, United States Code, and §§ 292 and 1920 through 1922 of Title 18, United States Code (relating to compensation for work injuries); (ii) Chapter 87 of Title 5, United States Code (relating to government employees group life insurance); (iii) Chapter 89 of Title 5, United States Code (relating to health insurance for government employees); and (iv) §§ 1302, 2108, 3305, 3306 [repealed], 3308 through 3320, 3351, 3363, 3364 [repealed], 3501 through 3504, 7511, 7512, and 7701 of Title 5, United States Code (relating to veteran's preference). Subject to the approval of the Mayor, the compensation schedules for such officers and employees shall be fixed and adjusted from time to time consistent with the public interest and in accordance with rates for comparable types of positions in like institutions of higher education. Salary levels shall be determined based on duties, responsibilities, and qualifications. The Board, upon the recommendations of the president of the college, shall establish, with the approval of the Mayor and without regard to the provisions of any other law, retirement and leave systems for such officers and employees which shall be comparable to such systems in like institutions of higher education;

(5) To employ and compensate noneducational employees of the Board and of the Federal City College in accordance with:

(A) The civil service laws;

(B) Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code (relating to classification of positions in government service);

(C) Section 3323 and subchapter III of Chapter 83 of Title 5, United States Code (relating to civil service retirement);

(D) Sections 7902, 8101 through 8138, and 8145 through 8150 of Title 5, United States Code, and §§ 292 and 1920 through 1922 of Title 18, United States Code (relating to compensation for work injuries);

(E) Chapter 87 of Title 5, United States Code (relating to government employees group life insurance);

(F) Chapter 89 of Title 5, United States Code (relating to health insurance for government employees);

(G) Sections 1302, 2108, 3305, 3306 [repealed], 3308 through 3320, 3351, 3363, 3364 [repealed], 3501 through 3504, 7511, 7512, and 7701 of Title 5, United States Code (relating to veteran's preference); and

(H) Any other laws applicable to noneducational employees of the Board of Education;

(6) To fix, from time to time, tuition to be paid by students attending the Federal City College. Tuition charged nonresidents shall be fixed in such amounts as will, to the extent feasible, approximate the cost to the District of Columbia of the services for which such charge is imposed. Receipts from the tuition charged students attending the college shall be deposited to the credit of the General Fund of the District of Columbia;

(7) To fix, from time to time, fees to be paid by students attending the Federal City College. Receipts from such fees shall be deposited into a

revolving fund in a private depository in the District, which fund shall be available, without fiscal year limitation, for such purposes as the Board shall approve. The Board is authorized to make necessary rules respecting deposits into and withdrawals from such fund;

(8) To transmit annually to the Mayor estimates of the appropriation required for the Federal City College for the ensuing year;

(9) To accept services and moneys, including gifts or endowments, from any source whatsoever, for use in carrying out the purposes of this subchapter. Such moneys shall be deposited in the Treasury of the United States to the credit of a trust fund account which is hereby authorized and may be invested and reinvested as trust funds of the District of Columbia. The disbursement of the moneys from such trust funds shall be in such amounts, to such extent, and in such manner as the Board, in its judgment, may determine necessary to carry out the purposes of this subchapter;

(10) To submit to the Mayor recommendations relating to legislation affecting the administration and programs of the Federal City College;

(11) To make such rules and regulations as the Board deems necessary to carry out the purposes of this subchapter;

(12) To assume control of the District of Columbia Teachers College established pursuant to § 38-151, from the Board of Education at such time as may be mutually agreed upon by such Boards and approved by the Mayor. At such time, the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available for such Teachers College are authorized to be transferred to, and brought under the control of, such Board of Higher Education, except that the laboratory schools shall remain under the control and management, and the employees assigned to such schools shall remain subject to the supervision of, the Board of Education. The noneducational employees of the Teachers College at the time the control of such Teachers College is assumed by the Board of Higher Education, shall retain all benefits provided by any law applicable to noneducational employees of the Board of Education, and shall be subject to any benefits provided for noneducational employees of the Board of Higher Education. The educational employees of the Teachers College at the time the control of such College is assumed by the Board of Higher Education shall be subject to the same benefits provided for all educational employees of the Board of Higher Education pursuant to paragraph (4) of this subsection, except that such educational employees may elect, within 90 days of such time, to remain subject to the provisions of part A of subchapter II of Chapter 20 of this title;

(13) To provide for the crediting to educational employees of the Teachers College, pursuant to the leave system established for educational employees of the Board of Higher Education under this subchapter, leave accumulated pursuant to the provisions of § 38-1909.

(b) A person shall, at the time of his registration to attend the Federal City College, be considered to be a legal resident of the District of Columbia for purposes of paragraph (6) of subsection (a) of this section if:

(1) Such person is domiciled in the District of Columbia on the date of

such registration and has been so domiciled during all of the 3-month period immediately preceding such date; and

(2) In case such person on such date: (A) has not attained 21 years of age; (B) has not been relieved of the disabilities of minority by order of a court of competent jurisdiction; and (C) has a living parent or a court-appointed guardian or custodian; there is domiciled in the District of Columbia on such date an individual who is the parent or court-appointed guardian or custodian of such person, and who has been so domiciled for all of the 3-month period immediately preceding such date.

(Nov. 7, 1966, 80 Stat. 1427, Pub. L. 89-791, title I, § 103.)

Cross references. — Abolition of Board of Higher Education, see § 38-1202.08.

Ceremonial expenses, see § 38-914.

Official expenses, see § 38-915.

Section references. — This section is referred to in § 38-1105.

Prior Codifications. — 1981 Ed., § 31-1403.

1973 Ed., § 31-1603.

References in text. — “Section 3306 of Title 5, United States Code,” referred to in subsections (a)(4)(iv) and (a)(5)(G), was repealed by the Act of February 10, 1978, 92 Stat. 25, Pub. L. 95-228.

“Section 3364 of Title 5, United States Code,” referred to in subsections (a)(4)(iv) and (a)(5)(G), was repealed by the Act of December 31, 1975, 89 Stat. 1057, Pub. L. 94-183.

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 38-1202.08.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Employment and dismissal of personnel.
Salary of personnel.

Employment and dismissal of personnel.

Defendant who was successor to person who, as chairman of District of Columbia Board of Higher Education, had denied dismissed employee's appeal from decision of Federal City College president denying employee reinstatement was not liable to employee in his individual capacity. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

Under provision of employment agreement with District of Columbia Board of Higher Education providing for dismissal for “misconduct in office,” termination would be justified only on finding of wrongdoing and not simply on accusation made against employee of wrongdoing; thus discharge of employee on basis of

indictment alone breached contract. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

By incorporating into employment agreement reached between plaintiff and Board of Education of District of Columbia a regulation issued by Board to govern adverse action taken against subject employees, breach of such regulations became actionable as breach of underlying contract. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

Dismissal of employee of Federal City College did not violate board of education regulations requiring that notice of termination contain statement of reasons and be specific and in detail, where notice sent to plaintiff specifically stated that indictment against him provided basis for termination, enumerated offenses with which plaintiff was charged and enclosed copy of indictment itself. *Pinkney v. District of*

Columbia, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

Where Federal City College improperly deprived employee of benefits of his employment agreement, employee was entitled to award of back pay from effective date of his termination to date on which contract would have expired had college not acted to terminate it prematurely. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

While, under employment contract, indictment against employee of Federal City College did not constitute ground for removal, once the contract expired, college was free to decide not to reappoint employee if it so chose; thus employee was not entitled to reinstatement and lost wages inasmuch as that would assume, wrongly, that if college had not terminated agreement prematurely, it automatically would have chosen to renew it. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

Although employee of Federal City College was wrongfully denied right to posttermination hearing and that denial deprived him of opportunity to clear his name and, through that, the chance of convincing appropriate authorities that he should be retained in college's employ despite indictment against him, nature of deprivation required remanding case back to District of Columbia Board of Higher Education since it, not court, was body charged with responsibility of making personnel decisions according to best interests of college, but court could guarantee that process for rendering decision was fair. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

Dismissed employee of Federal City College did not have reasonable expectation of continued employment amounting to property protected by due process clause, even though his employment agreement had been renewed twice before, where no statutory provision guaranteed indefinite future employment to employees such as plaintiff working under contract with College, no administrative regulation touched on whether college employee could expect to remain employed for indefinite term, and there was no informal institutional policy creating system of implied tenure for college employees. U.S. Const. Amend. 5. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

Courts should not invade, and only rarely assume academic oversight, except with the greatest caution and restraint, in such sensitive areas as faculty appointment, promotion, and tenure, especially in institutions of higher learning. *Brown v. George Washington Univ.*, 802 A.2d 382, 2002 D.C. App. LEXIS 379 (2002).

Where a university has adopted rules or guidelines in such areas as faculty appointment, promotion, and tenure, the courts will only intervene where there has not been substantial compliance with those procedures. *Brown v. George Washington Univ.*, 802 A.2d 382, 2002 D.C. App. LEXIS 379 (2002).

Evidence consisting of annual faculty reports and assistant professor's discussions with the department chair and an associate dean was sufficient to support finding that professor had adequate notice of any deficiencies in her performance prior to university's decision not to promote her or renew her contract. *Brown v. George Washington Univ.*, 802 A.2d 382, 2002 D.C. App. LEXIS 379 (2002).

Absent any showing that assistant professor was prevented from submitting any material to department that she felt was relevant to issue of her promotion or employment renewal, department's decision not to invite her to appear at meeting in which it voted to terminate her employment did not violate department guideline that it should invite faculty to appear "to provide additional information as may appear relevant," where department previously construed guideline as discretionary, and other candidates seeking promotion were likewise excluded from meeting. *Brown v. George Washington Univ.*, 802 A.2d 382, 2002 D.C. App. LEXIS 379 (2002).

Evidence supported education department's unfavorable rating of assistant professor in area of teaching effectiveness and department relations, and thus, university grievance committee's affirmation of department's decision not to promote or rehire professor was not arbitrary or capricious; there was testimony that professor's teaching was of average quality and that department chair and another professor believed that she was causing tension within the department. *Brown v. George Washington Univ.*, 802 A.2d 382, 2002 D.C. App. LEXIS 379 (2002).

University grievance committee's decision not to hold a formal hearing on former assistant professor's grievance regarding her removal as principal investigator on grant project caused her no substantial injury, and thus did not warrant relief, even though faculty code contemplated that a hearing would ordinarily be held on merits of a grievance, where committee previously held an extensive hearing on professor's grievances regarding termination of her employment, committee asked counsel to prepare memoranda on standards of review, evidence to be presented, injury suffered, and other procedural matters, and committee noted that its decision would not change even if professor proved all facts in her counsel's memorandum. *Brown v. George Washington Univ.*, 802 A.2d 382, 2002 D.C. App. LEXIS 379 (2002).

Transfer of plaintiff from position of college president's assistant for community affairs to position of "acting Associate, Office of the Vice President for Planning and Development" did not involve a "demotion or reduction in rank or compensation" within meaning of District of Columbia Board of Higher Education's resolution, which provided in effect that adverse actions subject to procedural requirement set forth in such resolution were actions such as removal, demotion, reduction in rank or compensation, where plaintiff retained same pay and grade level after transfer and the change in his duties were found not to be significant. *Roberson v. District of Columbia Board of Higher Education*, 359 A.2d 28, 1976 D.C. App. LEXIS 301 (1976).

Reassignment of college president's assistant for community affairs to position of "Acting Associate, Office of the Vice President for Planning and Development" was within District of Columbia Board of Higher Education's discretion to assign duties to such person under employment contract requiring him to perform all duties assigned to him by president or Board. *Roberson v. District of Columbia Board*

of Higher Education, 359 A.2d 28, 1976 D.C. App. LEXIS 301 (1976).

Salary of personnel.

Neither denial of a step increase in salary to plaintiff nor failure to renew his one-year contract to serve as college president's assistant for community affairs constituted a "removal, demotion, or reduction in rank" or compensation within meaning of District of Columbia Board of Higher Education's resolution which provided in effect that adverse actions subject to procedural requirements set forth in such resolution were actions such as removal, demotion, reduction in rank or compensation. *Roberson v. District of Columbia Board of Higher Education*, 359 A.2d 28, 1976 D.C. App. LEXIS 301 (1976).

District of Columbia Board of Higher Education's denial of step increase in salary to plaintiff and failure to renew his one-year employment contract to serve as college president's assistant for community affairs did not violate plaintiff's due process or other constitutional rights. *Roberson v. District of Columbia Board of Higher Education*, 359 A.2d 28, 1976 D.C. App. LEXIS 301 (1976).

§ 38-1104. Board of Higher Education — Facilities.

The Mayor and the Board of Education may furnish to the Board, upon request of such Board, such space and facilities in private buildings or in public buildings of the government of the District of Columbia, records, information, services, personnel, offices, and equipment as may be available and which are necessary to enable the Board properly to perform its functions under this subchapter.

(Nov. 7, 1966, 80 Stat. 1429, Pub. L. 89-791, title I, § 104.)

Prior Codifications. — 1981 Ed., § 31-1404.

1973 Ed., § 31-1604.

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 38-1202.08.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1105. Fiscal accountability.

All obligations and disbursements for the purpose of this subchapter shall be incurred, made, and accounted for in the same manner as other obligations and

disbursements for the District of Columbia and, except as provided in paragraph (9) of subsection (a) of § 38-1103, under the direction and control of the Mayor.

(Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 105.)

Prior Codifications. — 1981 Ed., § 31-1405.

1973 Ed., § 31-1605.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of Government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1106. Appropriations.

There is authorized to be appropriated from the revenues of the District of Columbia an amount not to exceed \$50,000,000 to carry out the purposes of this subchapter and subchapter II of this chapter. The authorization made by this section shall include any amounts made available pursuant to § 10-619.

(Nov. 7, 1966, 80 Stat. 1433, Pub. L. 89-791, title III, § 301(a).)

Prior Codifications. — 1981 Ed., § 31-1406.

1973 Ed., § 31-1606.

§ 38-1107. Land-grant colleges.

In the administration of: (1) the Act of August 30, 1890 (7 U.S.C. §§ 321 to 326, and 328) (known as the Second Morrill Act); (2) the 10th paragraph under the heading "Emergency Appropriations" in the Act of March 4, 1907 (7 U.S.C. § 322) (known as the Nelson Amendment); (3) section 22 of the Act of June 29, 1935 (7 U.S.C. § 329) (known as the Bankhead-Jones Act); (4) the Act of March 4, 1940 (7 U.S.C. §§ 1621 to 1627); (5) the Agricultural Marketing Act of 1946 (7 U.S.C. §§ 1621 to 1627, 1628 [repealed], 1629); and (6) section 38-1108; the Federal City College and the Washington Technical Institute shall each be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308) (known as the First Morrill Act); and the term "state" as used in the laws and provisions of law listed in the preceding clauses of this section shall include the District of Columbia.

(Nov. 7, 1966, Pub. L. 89-791, title I, § 107; June 20, 1968, 82 Stat. 241, Pub. L. 90-354, § 1; Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title IV, § 401(a).)

Section references. — This section is referred to in §§ 38-1110, 38-1111, and 38-1112.

Prior Codifications. — 1981 Ed., § 31-1407.

1973 Ed., § 31-1607.

§ 38-1108. Appropriation in lieu of donation of public lands.

In lieu of extending to the District of Columbia those provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308), relating to donations of public lands or land scrip for the endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, there is authorized to be appropriated to the District of Columbia the sum of \$7,241,706. Amounts appropriated under this section shall be held and considered to have been granted to the District of Columbia subject to those provisions of that Act applicable to the proceeds from the sale of land or land scrip, except that the funds appropriated in this section also may be invested in equity based securities if approved by the Chief Financial Officer of the District of Columbia. In addition, any proceeds and interest accruing thereon, which remain from the sale of the former radio station WDCU in an escrow account of the District of Columbia Financial Management and Assistance Authority for the benefit of the University of the District of Columbia, shall be used for the University of the District of Columbia's Endowment Fund. Such proceeds may be invested in equity based securities if approved by the Chief Financial Officer of the District of Columbia.

(Nov. 7, 1966, Pub. L. 89-791, title I, § 108(b); June 20, 1968, 82 Stat. 241, Pub. L. 90-354, § 1; Oct. 21, 1998, 112 Stat. 2681-142, Pub. L. 105-277, § 139; Jul. 24, 2001, Pub. L. 107-20, Chap. 3, 115 Stat. 155.)

Section references. — This section is referred to in §§ 38-1107, 38-1110, and 38-1111.

Prior Codifications. — 1981 Ed., § 31-1408.
1973 Ed., § 31-1608.

Effect of amendments. — Section 139 of Pub. L. 105-277 added the exception to the end of the second sentence.

Pub. L. 107-20 added the last sentence.

§ 38-1109. Federal City College and Washington Technical Institute administered as land-grant colleges; appropriations; allocations to Federal Extension Service of Department of Agriculture.

(a) In the administration of the Act of May 8, 1914 (7 U.S.C. §§ 341-346, 347a-349) (known as the Smith-Lever Act):

(1) The Federal City College and the Washington Technical Institute shall each be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301-305, 307, 308); and

(2) The term "state" as used in such Act of May 8, 1914, shall include the District of Columbia, except that the District of Columbia shall not be eligible to receive any sums appropriated under 7 U.S.C. § 343.

(b) In lieu of an authorization of appropriations for the District of Columbia under 7 U.S.C. § 343, there is authorized to be appropriated to the District of Columbia such sums as may be necessary to provide cooperative agricultural

extension work in the District of Columbia under such Act. For the fiscal years ending June 30, 1969, and June 30, 1970, sums appropriated under this subsection may be used to pay the total cost of providing such extension work; and for each fiscal year thereafter such sums may be used to pay no more than one half of such cost. Any reference in such Act (other than 7 U.S.C. § 343) to funds appropriated under such Act shall in the case of the District of Columbia be considered a reference to funds appropriated under this subsection.

(c) Four per centum of the sums appropriated under subsection (b) of this section for each fiscal year shall be allotted to the Federal Extension Service of the Department of Agriculture for administrative, technical, and other services provided by the Service in carrying out the purposes of this section.

(Nov. 7, 1966, Pub. L. 89-791, title I, § 109; June 20, 1968, 82 Stat. 241, Pub. L. 90-354, § 1; Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title IV, § 401(b).)

Section references. — This section is referred to in §§ 38-1110, 38-1111, and 38-1112.

Prior Codifications. — 1981 Ed., § 31-1409.
1973 Ed., § 31-1609.

References in text. — “Such Act” referred to throughout subsection (b), means the Act of May 8, 1914, codified in §§ 341 to 346 and 347a to 349 of Title 7, United States Code.

§ 38-1110. Grants to Federal City College and Washington Technical Institute.

Grants to the District of Columbia under the acts referred to in § 38-1107 and under § 38-1109(b) and the earnings of sums appropriated under § 38-1108 shall be shared equally between the Federal City College and the Washington Technical Institute.

(Nov. 7, 1966, Pub. L. 89-791, title I, § 110; Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title IV, § 401(c).)

Section references. — This section is referred to in § 38-1111.

Prior Codifications. — 1981 Ed., § 31-1410.

1973 Ed., § 31-1610.

§ 38-1111. Construction of §§ 38-1107 and 38-1109.

Sections 38-1107 and 38-1109 provide that the Washington Technical Institute shall be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862, for the purpose of enabling the Washington Technical Institute to share, under § 38-1110, with the Federal City College:

- (1) Grants under the acts referred to in § 38-1107;
- (2) Grants under § 38-1109(b); and
- (3) Earnings of sums appropriated under § 38-1108.

(Nov. 7, 1966, Pub. L. 89-791, title I, § 111; Jan. 5, 1971, 84 Stat. 1936, Pub. L. 91-650, title IV, § 401(c).)

Prior Codifications. — 1981 Ed., § 31-1411.

1973 Ed., § 31-1611.

References in text. — “The Act of July 2,

1862,” referred to in this section, is known as the First Morrill Act and is codified in 7 U.S.C. §§ 301 to 305, 307, and 308.

§ 38-1112. State consent requirement satisfied.

The enactment of §§ 38-1107 and 38-1109 shall, as respects the District of Columbia, be deemed to satisfy any requirement of state consent contained in any of the laws or provisions of law referred to in such sections.

(Nov. 7, 1966, Pub. L. 89-791, title I, § 112; June 20, 1968, 82 Stat. 242, Pub. L. 90-354, § 1; Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title IV, § 401(c).)

Prior Codifications. — 1981 Ed., § 31-1412.

1973 Ed., § 31-1612.

Subchapter II. Washington Technical Institute.

§ 38-1121. Definitions.

As used in this subchapter:

(1) The term “Washington Technical Institute” means the vocational and technical school established pursuant to this subchapter. Such institute shall provide:

(A) Vocational and technical education designed to fit individuals for useful employment in recognized occupations; and

(B) Vocational and technical courses on an individual, noncredit basis.

(2) The term “Mayor” means the Mayor of the District of Columbia.

(3) The term “Vocational Board” means the Board of Vocational Education established by § 38-1122.

(4) The term “Board of Education” means the Board of Education of the District of Columbia established by § 1-204.95 [repealed].

(Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title II, § 201.)

Cross references. — Authorization of appropriations for carrying out purpose of this subchapter, see § 38-1106.

Provisions of subchapter I applicable to Washington Technical Institute, see §§ 38-1107 to 38-1112.

Prior Codifications. — 1981 Ed., § 31-1421.

1973 Ed., § 31-1621.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1122. Board of Vocational Education — Composition; appointment; compensation; removal; liability.

(a) The Washington Technical Institute shall be under the control of a Board of Vocational Education which shall consist of 9 members appointed by the President of the United States. Of the 9 members, at least 6 shall be selected from industry. The members of the Vocational Board shall select a chairman from among their own number. The members of the Vocational Board shall be appointed for terms of 3 years; except that the terms of office of the members 1st taking office shall expire, as designated by the President at the time of appointment, 3 at the end of 1 year, 3 at the end of 2 years, and 3 at the end of 3 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term. A vacancy in the Vocational Board shall be filled in the same manner as the original appointment was made. Members of the Vocational Board shall serve without compensation, but may be reimbursed for their travel expenses, including per diem in lieu of subsistence, as authorized by § 5703 of Title 5, United States Code, for persons serving the government without compensation.

(b) The President of the United States may remove, in accordance with the provisions of this subsection, any member of the Vocational Board for adequate cause affecting his character and efficiency as a member. If the President determines that, with respect to any such member, there is adequate cause affecting his character and efficiency as a member, the President may appoint a special investigating board, consisting of not more than 3 members, to consider the matter. The investigating board, in considering such matter, shall hold public hearings and, on the basis thereof, report to the President with respect to their findings of fact and recommendations. Following the receipt by him of such report, the President may remove such member from office.

(c) The members of the Vocational Board shall not be personally liable in damages for any official action of the Vocational Board in which such members participate, nor shall they be liable for any costs that may be taxed against them or the Vocational Board on account of any such official action by them as members of the Vocational Board, but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits against the municipality; nor shall the Vocational Board or any of its members be required to give any bond or security for costs or damages on any appeal whatever.

(Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title II, § 202.)

Cross references. — Abolition of Vocational Board, see § 38-1202.08.

Section references. — This section is referred to in §§ 38-1121 and 38-1201.03.

Prior Codifications. — 1981 Ed., § 31-1422.

1973 Ed., § 31-1622.

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 38-1202.08.

§ 38-1123. Board of Vocational Education — Powers and duties.

(a) The Board is hereby vested with the following powers and duties:

(1) To develop detailed plans for and to establish, organize, and operate in the District of Columbia the Washington Technical Institute;

(2) To establish policies, standards, and requirements governing admission, programs, graduation (including the award of degrees) and general administration of the Washington Technical Institute;

(3) To appoint and compensate, without regard to the civil service laws or Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code, a President for the Washington Technical Institute;

(4) To employ and compensate such officers as it determines necessary for the Washington Technical Institute, and such educational employees for the Washington Technical Institute as the president thereof may recommend in writing. Such officers and educational employees may be employed and compensated without regard to: (A) the civil service laws; (B) Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code (relating to classification of positions in government service); (C) §§ 6301 through 6305 and 6307 through 6311 of Title 5, United States Code (relating to annual and sick leave for federal employees); (D) Chapter 15 and §§ 7324 through 7327 [omitted], of Title 5, United States Code (relating to political activities of government employees); (E) § 3323 and subchapter III of Chapter 83 of Title 5, United States Code (relating to civil service retirement); and (F) §§ 3326, 3501, 3502, 5531, 5532 [repealed], 5533, and 6303 of Title 5, United States Code (relating to dual pay and dual employment); but the employment and compensation of such officers and educational employees shall be subject to: (i) Sections 7902, 8101 through 8138, and 8145 through 8150 of Title 5, United States Code, and §§ 292 and 1920 through 1922 of Title 18, United States Code (relating to compensation for work injuries); (ii) Chapter 87 of Title 5, United States Code (relating to government employees group life insurance); (iii) Chapter 89 of Title 5, United States Code (relating to health insurance for government employees); and (iv) §§ 1302, 2108, 3305, 3306 [repealed], 3308 through 3320, 3351, 3363, 3364 [repealed], 3501 through 3504, 7511, 7512, and 7701 of Title 5, United States Code (relating to veteran's preference). Subject to the approval of the Mayor, the compensation schedules for such officers and employees shall be fixed and adjusted from time to time consistent with the public interest and in accordance with rates for comparable types of positions in like technical institutes. Salary levels shall be determined based on duties, responsibilities, and qualifications. The Vocational Board, upon the recommendations of the President of the Washington Technical Institute, shall establish, with the approval of the Mayor and without regard to the provisions of any other law, retirement and leave systems for such officers and employees which shall be comparable to such systems in like technical institutes;

(5) To employ and compensate noneducational employees of the Vocational Board and the Washington Technical Institute in accordance with:

(A) The civil service laws;

(B) Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code (relating to classification of positions in government service);

(C) Section 3323 and subchapter III of Chapter 83 of Title 5, United States Code (relating to civil service retirement);

(D) Sections 7902, 8101 through 8138, and 8145 through 8150 of Title 5, United States Code, and §§ 292 and 1920 through 1922 of Title 18, United States Code (relating to compensation for work injuries);

(E) Chapter 87 of Title 5, United States Code (relating to government employee's group life insurance);

(F) Chapter 89 of Title 5, United States Code (relating to health insurance for government employees);

(G) Sections 1302, 2108, 3305, 3306 [repealed], 3308 through 3320, 3351, 3363, 3364 [repealed], 3501 through 3504, 7511, 7512, and 7701 of Title 5, United States Code (relating to veteran's preference); and

(H) Any other laws applicable to noneducational employees of the Board of Education;

(6) To fix, from time to time, tuition to be paid by students attending the Washington Technical Institute. Tuition charged nonresidents shall be fixed in such amounts as will, to the extent feasible, approximate the cost to the District of Columbia of the services for which such charge is imposed. Receipts from the tuition charged students attending the institute shall be deposited to the credit of the General Fund of the District of Columbia;

(7) To fix, from time to time, fees to be paid by students attending the Washington Technical Institute. Receipts from such fees shall be deposited into a revolving fund in a private depository in the District, which fund shall be available, without fiscal year limitation, for such purposes as the Vocational Board shall approve. The Vocational Board is authorized to make necessary rules respecting deposits into and withdrawals from such fund;

(8) To transmit annually to the Mayor estimates of the appropriation required for the Washington Technical Institute for the ensuing year;

(9) To accept services and moneys, including gifts or endowments, from any source whatsoever, for use in carrying out the purposes of this subchapter. Such moneys shall be deposited in the Treasury of the United States to the credit of a trust fund account which is hereby authorized and may be invested and reinvested as trust funds of the District of Columbia. The disbursement of the moneys from such trust funds shall be in such amounts, to such extent, and in such manner as the Vocational Board, in its judgment, may determine necessary to carry out the purposes of this subchapter;

(10) To submit to the Mayor recommendations relating to legislation affecting the administration and programs of the Washington Technical Institute;

(11) To make such rules and regulations as the Vocational Board deems necessary to carry out the purposes of this subchapter.

(b) A person shall, at the time of his registration to attend the Washington Technical Institute, be considered to be a legal resident of the District of Columbia for purposes of paragraph (6) of subsection (a) of this section if:

(1) Such person is domiciled in the District of Columbia on the date of

such registration and has been so domiciled during all of the 3-month period immediately preceding such date; and

(2) In case such person on such date: (A) has not attained 21 years of age; (B) has not been relieved of the disabilities of minority by order of a court of competent jurisdiction; and (C) has a living parent or a court-appointed guardian or custodian; there is domiciled in the District of Columbia on such date an individual who is the parent or court-appointed guardian or custodian of such person, and who has been so domiciled for all of the 3-month period immediately preceding such date.

(Nov. 7, 1966, 80 Stat. 1431, Pub. L. 89-791, title II, § 203.)

Cross references. — Abolition of Vocational Board, see § 31-1517.

Ceremonial expenses, see § 38-1202.08.

Official expenses, see § 38-915.

Provisions of subchapter I applicable to Washington Technical Institute, see § 38-1107 et seq.

Section references. — This section is referred to in § 38-1125.

Prior Codifications. — 1981 Ed., § 31-1423.

1973 Ed., § 31-1623.

References in text. — “Section 3306 of Title 5, United States Code,” referred to in subsections (a)(4)(iv) and (a)(5)(G), was repealed by the Act of February 10, 1978, 92 Stat. 25, Pub. L. 95-228.

“Section 3364 of Title 5, United States Code,” referred to in subsections (a)(4)(iv) and (a)(5)(G), was repealed by the Act of December 31, 1975, 89 Stat. 1057, Pub. L. 94-183.

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the

University of the District of Columbia convened its first meeting. See § 38-1202.08.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1124. Board of Vocational Education — Facilities.

The Mayor and the Board of Education may furnish to the Vocational Board, upon request of such Board, such space and facilities in private buildings or in public buildings of the government of the District of Columbia, records, information, services, personnel, offices, and equipment as may be available and which are necessary to enable the Vocational Board properly to perform its functions under this subchapter.

(Nov. 7, 1966, 80 Stat. 1433, Pub. L. 89-791, title II, § 204.)

Prior Codifications. — 1981 Ed., § 31-1424.

1973 Ed., § 31-1624.

Editor's notes. — The Board of Higher Education and the Vocational Board were abolished on the day the Board of Trustees of the University of the District of Columbia convened its first meeting. See § 38-1202.08.

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1125. Fiscal accountability.

All obligations and disbursements for the purpose of this subchapter shall be incurred, made, and accounted for in the same manner as other obligations and disbursements for the District of Columbia and, except as provided in paragraph (9) of subsection (a) of § 38-1123, under the direction and control of the Mayor.

(Nov. 7, 1966, 80 Stat. 1433, Pub. L. 89-791, title II, § 205.)

Cross references. — Provisions of subchapter I applicable to Washington Technical Institute, see § 38-1107 et seq.

Prior Codifications. — 1981 Ed., § 31-1425.

1973 Ed., § 31-1625.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 12. PUBLIC POSTSECONDARY EDUCATION REORGANIZATION.

UNIT A. GENERAL

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- 38-1201.03. Definitions.

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- 38-1202.02. [Repealed].
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- 38-1202.08. Transfer of functions, personnel, property, assets, and liabilities.
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- 38-1205.01. Purposes.
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Sec.

- 38-1205.09. Review of records.
- 38-1205.10. Preferential tuition for District of Columbia residents.
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- 38-1205.12. Full faith and credit of the District of Columbia not pledged.
- 38-1205.13. [Repealed].

Subchapter VI. Establishment of District of Columbia School of Law Within the University of the District of Columbia

- 38-1206.01, 38-1206.02. [Repealed].

Subchapter VII. Provision of Tuition Grants

- 38-1207.01. Definitions.
- 38-1207.02. Criteria for tuition grant eligibility.
- 38-1207.03. Conditions of enrollment.
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Subchapter VIII. Office of Vocational Education and Skills Training

- 38-1208.01. Definitions.
- 38-1208.02. Establishment of the Office of Vocational Education and Skills Training at the University of the District of Columbia.
- 38-1208.03. Establishment of Advisory Board.
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- 38-1208.05. Executive Director.
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UNIT B. AUDITS

- 38-1231.01. Biennial audits of UDC Endowment Fund.

UNIT C. UDC CAPITAL BUDGET AUTHORITY AND FUNDING TRANSFER

- 38-1241.01. Transfer of capital budget authority and funding to the University of the District of Columbia.

Unit A. General.

Subchapter I. General Provisions.

§ 38-1201.01. Short title.

This unit may be cited as the "District of Columbia Public Postsecondary Education Reorganization Act".

(Oct. 26, 1974, 88 Stat. 1423, Pub. L. 93-471, title I, § 101.)

§ 38-1201.02. Declaration of purpose.

It is the intent of Congress to authorize a public land-grant university through the reorganization of the existing local institutions of public postsecondary education in the District of Columbia. It is the clear and specific intent of the Congress that vocational and technological education, as well as liberal arts, sciences, teacher education, and graduate and postgraduate studies, within the University be given at all times its proper priority in terms of funding with other units within the University, and that the land-grant funds be utilized by the University in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308) (known as the First Morrill Act).

(Oct. 26, 1974, 88 Stat. 1423, Pub. L. 93-471, title I, § 102.)

Prior Codifications. — 1981 Ed., § 31-1501.

1973 Ed., § 31-1701.

Editor's notes. — Intent of Council: Section 2 of the Act of September 9, 1975, D.C. Law 1-12, and § 2 of the Act of November 1, 1975, D.C. Law 1-36, both provided that it was the intent of the Council of the District of Columbia to approve the Congressional intent expressed in this section, and to provide a range of programs and studies designed to reach the widest possible number of citizens and residents of the District of Columbia.

Nonresident students: Public Law 102-111, 105 Stat. 563, the District of Columbia Appropriations Act, 1992, provided that the public education appropriation shall not be available to subsidize the education of nonresidents of the District of Columbia at the University of the District of Columbia, unless the Board of Trustees of the University of the District of Columbia adopts, for the fiscal year ending September 30, 1992, a tuition rate schedule that will establish the tuition rate for nonresident students at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education in the metropolitan area.

Award of funds: Section 139 of Pub. L. 101-168, the District of Columbia Appropriations

Act, 1990, provided that of the funds appropriated in Pub. L. 100-202 for carrying out part B of title VII of the Higher Education Act that remain available for obligation, \$6,700,000 shall be awarded without regard to § 701(B), § 721(B), and § 721(C) of said Act to the consortium of institutions of higher education in the Washington, D.C. metropolitan area for the purpose of constructing and equipping an academic research library to link the library and information resources of the universities participating in the consortium.

Establishment of District of Columbia Advisory Committee on Education: See Mayor's Order 89-256, November 7, 1989.

Appropriations authorized: Public Law 104-194, 110 Stat. 2359, the District of Columbia Appropriations Act, 1997, provided \$69,801,000 and 917 full-time equivalent positions (including \$38,479,000 and 572 full-time equivalent positions from local funds, \$11,747,000 and 156 full-time equivalent positions from Federal funds, and \$19,575,000 and 189 full-time equivalent positions from other funds) for the University of the District of Columbia; provided, that not to exceed \$2,500 for the President of the University of the District of Columbia shall be available for expenditures for official purposes.

CASE NOTES

Jurisdiction.

Board of Trustees of University of District of Columbia was arm of government and was not subject to diversity jurisdiction in personal injury action, even though Board had extensive corporate powers and separate fund; District committed itself to funding university and

would ultimately pay any judgment against Board. 18 U.S.C. § 1332; U.S.C. Const.Amend. 11; D.C. Code 1981, §§ 12-309, 31-1501, 31-1511(a-c), 31-1515, 31-1516(2)(B), (2)(C)(ii, iii), (4-7, 9, 15), 31-1533(c); §§ 31-1531, 31-1534 (repealed). *Krieger v. Trane Co.*, 765 F. Supp. 756, 1991 U.S. Dist. LEXIS 7073 (1991).

§ 38-1201.03. Definitions.

For the purpose of this unit:

(1) The term "Trustees" means the Board of Trustees established under subchapter II of this unit.

(2) The term "Chief Executive Officer" means the chief executive and administrative officer of the University.

(3) The term "University" means the University of the District of Columbia authorized and directed to be established under subchapter II of this unit.

(4) The term "academic and administrative head" means the academic and administrative head of each of the components of the University.

(5) The term "Mayor" means the Office of the Mayor of the District of Columbia established by § 1-204.21.

(6) The term "Council" means the Council of the District of Columbia established by § 1-204.01.

(7) The term "Board of Higher Education" means the Board of Higher Education established under § 38-1102.

(8) The term "Vocational Board" means the Board of Vocational Education established under § 38-1122.

(9) The term "Board" means the District of Columbia Board of Education established under § 1-204.95 [repealed].

(10) The term "financial institution" means an insured bank as defined in § 3 of the Federal Deposit Insurance Act [12 U.S.C. § 1813], or a savings and loan association as defined in § 401 [12 U.S.C. § 1724, repealed] of the National Housing Act.

(11) The term "component" means that segment of the whole University such as a school, college, branch or campus, which, because of its nature, the Board of Trustees specifies as constituting an identifiable entity for the purpose of, but not limited to, being administered by an academic and administrative head.

(12) The term "University of the District of Columbia School of Law" ("School of Law") means the institution that had been established under § 38-1205.03(b) [repealed] as the District of Columbia School of Law. Any reference to a degree holder of the School of Law shall include any person who received a degree from the Antioch School of Law during the period when it was operated as a part of the Antioch University, as well as any person who received a degree after the establishment of the public School of Law under § 38-1205.03 [repealed] and persons who receive a degree from the University of the District of Columbia School of Law.

(13) "State" means any of the 50 states of the United States in addition to the District of Columbia, Puerto Rico, and the Virgin Islands of the United States.

(Oct. 26, 1974, 88 Stat. 1424, Pub. L. 93-471, title I, § 103; Nov. 1, 1975, D.C. Law 1-36, § 3, 22 DCR 2909; Aug. 1, 1996, D.C. Law 11-152, § 301(a), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1502.

1973 Ed., § 31-1702.

Emergency legislation. — For temporary amendment of section, see § 301(a) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(a) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provided for the application of the act.

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 11-152. — Law 11-152, the “Fiscal Year 1996 Budget Support

Act of 1996,” was introduced in Council and assigned Bill No. 11-655, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 28, 1996, it was assigned Act No. 11-279 and transmitted to both Houses of Congress for its review. D. C. Law 11-152 became effective on August 1, 1996.

References in text. — “Section 3 of the Federal Deposit Insurance Act,” referred to in paragraph (10), is codified at 12 U.S.C. § 1813.

“Section 401 of the National Housing Act,” referred to in paragraph (10), was codified at 12 U.S.C. § 1724, and was repealed by the Act of August 9, 1989, 103 Stat. 363, Pub. L. 101-73.

Section 38-1205.03, referred to twice in (12), was repealed by D.C. Law 11-152, 43 DCR 2978.

Subchapter II. University of the District of Columbia.

§ 38-1202.01. Establishment of Board of Trustees and University.

(a) There is established a body corporate by name of the Board of Trustees of the University of the District of Columbia, which by that name and style shall have perpetual succession. It shall be charged with the responsibility of governing the University of the District of Columbia and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties authorized by this section, and §§ 38-1202.06 and 38-1204.03, including the power to:

- (1) Adopt, alter, and use a corporate seal, which shall be judicially noticed;
- (2) Make contracts;
- (3) Sue and be sued;
- (4) Complain and defend in its name in any court of competent jurisdiction;
- (5) Make, deliver, and receive deeds, leases, and other instruments;
- (6) Take title to real and other property in its name;
- (7) Adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations it considers necessary for the governance and administration of the University; and
- (8) Procure and contract for goods and services.

(b) There is hereby authorized to be established an independent agency of the government of the District of Columbia known as the University of the District of Columbia which shall be governed by the Board of Trustees as established in subsection (a) of this section.

(c) The Board of Trustees shall consist of 15 voting members selected in the following manner:

- (1) Eleven members shall be appointed by the Mayor with the advice and consent of the Council.
- (2) One member shall be a full-time student in good standing at the

University elected by secret ballot by the student community at an election at which each registered student at the University shall be entitled to one vote.

(3) Each of the 3 remaining members shall be a holder of a degree from the University of the District of Columbia or from one or more of its predecessor institutions, including Miner Teachers College, Wilson Teachers College, District of Columbia Teachers College, Washington Technical Institute, or Federal City College, and shall be elected by a postal ballot election at which each living person who holds a degree from any of the foregoing institutions shall be sent a ballot and shall be entitled to vote.

(4) The Board of Trustees shall be responsible for the efficient and fair conduct of the elections for student and alumni Trustees pursuant to paragraphs (2) and (3) of this subsection. The elections shall be governed by election rules adopted by the Board of Trustees in accordance with subchapter I of Chapter 5 of Title 2. The initial rules shall be adopted by the Board of Trustees within 100 days of February 27, 1990, and shall include provisions for nomination of candidates by petition and may also provide for a nominating committee which, if it is appointed, shall submit for inclusion on the ballot twice as many names of nominees as there are positions to be filled. The Board of Trustees may, in its discretion, seek and receive advice and assistance from the Board of Elections and Ethics in preparing the election rules. The Board of Elections and Ethics may, by agreement with the Board of Trustees of the University, furnish other assistance requested by the Board of Trustees.

(c-1) Four of the 11 Trustees appointed by the Mayor with the advice and consent of the Council may be nonresidents of the District of Columbia. At least 7 of the 11 Trustees shall reside in the District of Columbia at the time of their confirmation by the Council. The Mayor shall submit the names of District residents and nonresidents in a proportion to comply with the provisions of this subsection, when submitting nominees to the Council.

(d) The student member of the Board of Trustees shall serve for a term of one year, beginning on May 15th following his or her election.

(e) Except as provided in § 38-1202.02(l) [repealed], each nonstudent member of the Board of Trustees shall serve for a 5-year term, beginning on May 15th following his or her election or confirmation by the Council.

(f) A member of the Board of Trustees who has completed a full 5-year term in accordance with subsection (e) of this section may be reappointed or re-elected to serve 1 additional term, after which the former member may not become a Trustee by election or by appointment until May 15th of the 5th year following the year in which the former member left the Board. Service pursuant to § 38-1202.02(l) [repealed] for the remainder of the term of a Trustee who has died or resigned shall not, by itself or in conjunction with other service, constitute a bar to the re-election or reappointment of a person who has served as a Trustee.

(g) Each member of the Board of Trustees serving on February 27, 1990, shall continue to serve until May 15th following the conclusion of his or her previously established term.

(h) Repealed.

(i) Repealed.

(j) A chairperson and a vice-chairperson of the Board of Trustees:

(1) Shall be chosen by a majority vote of the Trustees;

(2) Shall serve as chairperson or vice-chairperson until May 15 next following his or her election to that office; and

(3) May be re-elected as chairperson or vice-chairperson if still a member of the Board of Trustees.

(k) A member of the Board of Education shall not serve as a Trustee of the University. Except as provided in subsection (l) of this section a paid officer or employee of the University of the District of Columbia shall not serve as a Trustee. A retired officer or employee of the University of the District of Columbia, shall, however, be eligible to serve as a Trustee. A Trustee shall forfeit his or her membership on the Board upon failure to maintain the qualifications required by this subsection.

(l) The Chief Executive Officer of the University shall be a non-voting ex officio member of the Board of Trustees.

(m) Repealed.

(n) Repealed.

(Oct. 26, 1974, 88 Stat. 1424, Pub. L. 93-471, title II, § 201; Sept. 9, 1975, D.C. Law 1-12, § 3(a), (b), 22 DCR 1806; Nov. 1, 1975, D.C. Law 1-36, § 4, 23 DCR 2911; Apr. 6, 1977, D.C. Law 1-99, § 2(b), 23 DCR 8729; Feb. 27, 1990, D.C. Law 8-69, § 2, 36 DCR 7737; Oct. 15, 1993, D.C. Law 10-38, § 2, 40 DCR 5819; Aug. 1, 1996, D.C. Law 11-152, § 301(b), 43 DCR 2978; Apr. 12, 1997, D.C. Law 11-259, § 314(a), 44 DCR 1423; May 23, 2000, D.C. Law 13-116, § 2, 47 DCR 1998; Mar. 2, 2007, D.C. Law 16-191, § 3, 53 DCR 6794; Mar. 8, 2011, D.C. Law 18-286, § 2(a), 57 DCR 11012.)

Cross references. — Board of trustees candidates, disclosure of interests, see § 1-1106.02.

Mayoral nomination of Board of Trustees of the University of the District of Columbia, review and approval of Council, see § 1-523.01.

University of the District of Columbia, credits and refunds for overpayments, see § 47-1812.11.

Section references. — This section is referred to in § 38-1202.02. This section is referred to in § 47-2853.04.

Prior Codifications. — 1981 Ed., § 31-1511.

1973 Ed., § 31-1711.

Effect of amendments. — D.C. Law 13-116 added subsec. (c-1).

D.C. Law 16-191 repealed subsec. (i) which had read as follows: “(i) When the term of one or more Trustees appointed by the Mayor with the advice and consent of the Council is due to expire on May 15th in any year, the Mayor shall transmit to the Council, not later than February 17th of that year, the nomination of a person to succeed each Trustee whose term is due to expire that year. The Council shall act on each timely nomination not later than April 15th of that year, and if no action is taken by

the Council by April 15th of that year, the nomination shall be deemed approved.”

D.C. Law 18-286 rewrote subsec. (a), which had read as follows: “(a) There is hereby established a body corporate by name of the Board of Trustees of the University of the District of Columbia and by that name and style shall have perpetual succession. It shall be charged with the responsibility of governing the University of the District of Columbia and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by this section. Pursuant to this section and §§ 38-1202.06 and 38-1204.03, it shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; and to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction; to make, deliver, and receive deeds, leases and other instruments and to take title to real and other property in its own name; and to adopt, prescribe, amend, repeal, and enforce such bylaws, rules, and regulations as it may deem necessary for the governance and administration of the University; provided, however, that contracting for the purchase or disposal of goods and services shall be carried out by the Office of

Contracting and Procurement on behalf of the Board of Trustees.”

Temporary Amendment of Section. — Section 2 of D.C. Laws 13-95, in subsec. (c)(1), added the second sentence, and added a new section to provide for filling vacancies on the Board.

Section 6(b) of D.C. Laws 13-95 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Laws 13-58 added subsection (c-1) to read as follows:

“Four of the 11 Trustees appointed by the Mayor with the advice and consent of the Council may be nonresidents of the District of Columbia. At least 7 of the 11 Trustees shall reside in the District of Columbia at the time of their confirmation by the Council. The Mayor shall submit the names of District residents and nonresidents in a proportion to comply with the provisions of this subsection, when submitting nominees to the Council.”

Section 4(b) of D.C. Laws 13-58 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 17-302, in subsec. (f), inserted the following sentence at the end: “Notwithstanding section 2(c) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(c)), a member shall continue to serve until a successor is appointed and confirmed.”

Section 4(b) of D.C. Law 17-302 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 18-92, in subsec. (a), substituted “the University.” for “the University; provided, however, that contracting for the purchase or disposal of goods and services shall be carried out by the Office of Contracting and Procurement on behalf of the Board of Trustees.”

Section 5(b) of D.C. Law 18-92 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 18-282 amended subsec. (a) to read as follows:

“(a) There is established a body corporate by name of the Board of Trustees of the University of the District of Columbia, which by that name and style shall have perpetual succession. It shall be charged with the responsibility of governing the University of the District of Columbia (“University”) and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties authorized by this section, and sections 206 and 403, including the power to:

“(1) Adopt, alter, and use a corporate seal, which shall be judicially noticed;

“(2) Make contracts;

“(3) Sue and be sued;

“(4) Complain and defend in its name in any court of competent jurisdiction;

“(5) Make, deliver, and receive deeds, leases, and other instruments;

“(6) Take title to real and other property in its name;

“(7) Adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations it considers necessary for the governance and administration of the University; and

“(8) Procure and contract for goods and services.”

Section 5(b) of D.C. Law 18-282 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 301(b) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(b) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

For temporary (90-day) amendment of section, see § 2 of the University of the District of Columbia Board of Trustees Residency Requirement Emergency Amendment Act of 1999 (D.C. Act 13-128, August 4, 1999, 46 DCR 6644).

For temporary (90-day) amendment of section, see § 2(a) of the Board of Trustees of the University of the District of Columbia Emergency Amendment Act of 1999 (D.C. Act 13-210, December 17, 1999, 47 DCR 9).

For temporary (90-day) amendment of section, see § 2 of the University of the District of Columbia Board of Trustees Residency Requirement Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-226, January 11, 2000, 47 DCR 481).

For temporary (90-day) amendment of section, see § 2(a) of the Board of Trustees of the University of the District of Columbia Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-280, March 7, 2000, 47 DCR 2022).

For temporary (90-day) amendment of section, see § 2(a) of the Board of Trustees of the University of the District of Columbia Emergency Amendment Act of 2000 (D.C. Act 13-372, June 26, 2000, 47 DCR 5844).

For temporary (90 day) amendment of section, see § 2 of University of the District of Columbia Board of Trustees Emergency Amendment Act of 2008 (D.C. Act 17-569, November 6, 2008, 55 DCR 12112).

For temporary (90 day) amendment of section, see § 2 of University of the District of Columbia Board of Trustees Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-3, January 30, 2009, 56 DCR 1625).

For temporary (90 day) amendment of section, see § 2(a) of University of the District of

Columbia Procurement Authority Emergency Amendment Act of 2009 (D.C. Act 18-200, October 10, 2009, 56 DCR 8137).

For temporary (90 day) amendment of section, see § 2(a) of University of the District of Columbia Procurement Authority Emergency Amendment Act of 2010 (D.C. Act 18-467, July 7, 2010, 57 DCR 6914).

For temporary (90 day) amendment of section, see § 2(a) of University of the District of Columbia Board of Trustees Quorum and Contracting Reform Emergency Amendment Act of 2010 (D.C. Act 18-542, October 9, 2010, 57 DCR 9627).

For temporary (90 day) amendment of section, see § 2(a) of University of the District of Columbia Board of Trustees Quorum and Contracting Reform Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-661, December 30, 2010, 58 DCR 70).

For temporary (90 day) addition of sections, see §§ 4032, 4042 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of sections, see §§ 4032, 4042 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 1-12. — Law 1-12 was introduced in Council and assigned Bill No. 1-75, which was referred to the Committee on Higher Education/University of the District of Columbia. The Bill was adopted on first and second readings on May 13, 1975 and May 27, 1975, respectively. Signed by the Mayor on June 13, 1975, it was assigned Act No. 1-18 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-36. — Law 1-36 was introduced in Council and assigned Bill No. 1-115, which was referred to the Committee on Higher Education/University of the District of Columbia. The Bill was adopted on first and second readings on July 15, 1975 and July 29, 1975, respectively. Signed by the Mayor on August 25, 1975, it was assigned Act No. 1-50 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-99. — Law 1-99 was introduced in Council and assigned Bill No. 1-300, which was referred to the Committee on Higher Education/University of the District of Columbia. The Bill was adopted on first and second readings on July 27, 1976 and September 15, 1976, respectively. Signed by the Mayor on October 18, 1976, it was assigned Act No. 1-161 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-69. — Law 8-69 was introduced in Council and assigned Bill No. 8-232, which was referred to the Committee on Education and Libraries. The Bill

was adopted on first and second readings on September 26, 1989, and October 10, 1989, respectively. Approved without the signature of the Mayor on November 1, 1989, it was assigned Act No. 8-105 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-10. — D.C. Law 10-10, the "Board of Trustees of the University of the District of Columbia Term Hold-over Temporary Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-262. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 8, 1993, it was assigned Act No. 10-37 and transmitted to both Houses of Congress for its review. D.C. Law 10-10 became effective on July 31, 1993.

Legislative history of Law 10-38. — D.C. Law 10-38, the "Board of Trustees of the University of the District of Columbia Term Hold-over Amendment Act of 1993," was introduced in Council and assigned Bill No. 10-272, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on July 29, 1993, it was assigned Act No. 10-71 and transmitted to both Houses of Congress for its review. D.C. Law 10-38 became effective on October 15, 1993.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 9, 1997.

Legislative history of Law 13-116. — Law 13-116, the "University of the District of Columbia Board of Trustees Residency Requirement Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-330, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on January 4, 2000, and February 1, 2000, respectively. Signed by the Mayor on February 18, 2000, it was assigned Act No. 13-269 and transmitted to both Houses of Congress for its review. D.C. Law 13-116 became effective on May 23, 2000.

Legislative history of Law 16-191. — Law 16-191, the "Technical Amendments Act of 2006," was introduced in Council and assigned

Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Law 18-286, the "University of the District of Columbia Board of Trustees Quorum and Contracting Reform Amendment Act of 2010", was introduced in Council and assigned Bill No.

18-724, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on October 19, 2010, and November 9, 2010, respectively. Enacted without signature of the Mayor on December 2, 2010, it was assigned Act No. 18-596 and transmitted to both Houses of Congress for its review. D.C. Law 18-286 became effective on March 8, 2011.

References in text. — Section 38-1202.02, referred to in subsections (e) and (f), was repealed by D.C. Law 12-68, § 401(i), effective April 29, 1998.

CASE NOTES

Actions by and against.

Waiver of sovereign immunity against suit in federal court did not arise from waiver of sovereign immunity of Board of Trustees of University of District of Columbia against suit in District of Columbia courts. D.C. Code 1981, § 31-1511(a). *Krieger v. Trane Co.*, 765 F. Supp. 756, 1991 U.S. Dist. LEXIS 7073 (1991).

Board of Trustees of University of District of Columbia was arm of government and was not subject to diversity jurisdiction in personal injury action, even though Board had extensive corporate powers and separate fund; District committed itself to funding university and would ultimately pay any judgment against Board. 18 U.S.C. § 1332; U.S.C. Const. Amend. 11; D.C. Code 1981, §§ 12-309, 31-1501, 31-1511(a-c), 31-1515, 31-1516(2)(B), (2)(C)(ii, iii), (4-7, 9, 15), 31-1533(c); §§ 31-1531, 31-1534 (repealed). *Krieger v. Trane Co.*, 765 F. Supp. 756, 1991 U.S. Dist. LEXIS 7073 (1991).

Because statute establishing District of Columbia Board of Education did not provide that Board might sue or be sued, Board was not suable entity and could not be sued, and though plaintiffs who sought injunctive relief under Education of the Handicapped Act, *inter alia*, could name individual members of Board as parties and also name other public officials as

parties, to extent that claim for injunctive relief was properly directed at those board members or officers, any claim for damages was to name district as party if district funds were to be reached. Education of the Handicapped Act, § 601 et seq., as amended, 20 U.S.C. § 1400 et seq.; Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C. § 794; 42 U.S.C. § 1983; U.S. Const. Amend. 5; D.C. Code 1981, §§ 31-101, 31-1511. *Tschanneral v. District of Columbia Bd. of Education*, 594 F. Supp. 407, 1984 U.S. Dist. LEXIS 23620 (1984).

District of Columbia itself was not a proper defendant to university student's claims, and instead, student should have sued the Board of Trustees, in light of statute which established a body corporate by name of the Board of Trustees of the University of the District of Columbia, giving it the power to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction. *Manago v. District of Columbia*, 934 A.2d 925, 2007 D.C. App. LEXIS 651 (2007).

Section 12-309, mandating notice requirements in actions against the District of Columbia, does not apply to actions against Board of Trustees of the University of the District of Columbia. *Downs v. Board of Trustees*, 112 WLR 493 (Super. Ct. 1984).

§ 38-1202.02. Board of Trustees Nominating Committee. [Repealed].

Repealed.

(Oct. 26, 1974, 88 Stat. 1425, Pub. L. 93-471, title II, § 202; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2916; Mar. 14, 1985, D.C. Law 5-161, § 2, 32 DCR 158; Feb. 27, 1990, D.C. Law 8-69, § 3, 36 DCR 7737; April 29, 1998, D.C. Law 12-86, § 401(i), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 31-1512.

1973 Ed., § 31-1712.

§ 38-1202.03. Suspension, removal, and termination of Trustees.

(a) Any Trustee shall be automatically suspended from serving as such member after he has been found guilty of a felony by a court of competent jurisdiction. Upon a final determination of his guilt or innocence, the term of such member shall automatically terminate or be reinstated.

(b) The Board of Trustees shall have the power to remove any member, after fair notice and an opportunity to be heard, at any time for adequate cause which relates to such members' character or efficiency as a Trustee.

(c) The tenure of the student member shall automatically terminate if the status of such member ceases to be that of a full-time student at the University.

(Oct. 26, 1974, 88 Stat. 1425, Pub. L. 93-471, title II, § 203; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2921.)

Prior Codifications. — 1981 Ed., § 31-1513.

1973 Ed., § 31-1713.

Legislative history of Law 1-36. — For

legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

§ 38-1202.04. Reimbursement of Trustees.

Trustees shall serve without compensation except that each Trustee shall be entitled to reimbursement for actual and necessary expenses incurred while actually engaged in service as a Trustee, provided that these expenses are properly documented. In no case, however, shall a Trustee receive expense reimbursement that exceeds \$4,000 per annum.

(Oct. 26, 1974, 88 Stat. 1426, Pub. L. 93-471, title II, § 204; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2292; Mar. 3, 1979, D.C. Law 2-139, § 3204(f), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Apr. 20, 1991, D.C. Law 8-259, § 2, 38 DCR 1449; July 13, 1991, D.C. Law 9-13, § 2, 38 DCR 3378.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 31-1514.

1973 Ed., § 31-1714.

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — Law

3-81 was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980 and May 20, 1980, respectively. Signed by the Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-259. — Law 8-259 was introduced in Council and assigned Bill No. 8-734. The Bill was adopted on first and second readings on December 18, 1990, and February 5, 1991, respectively. Signed by the Mayor on February 15, 1991, it was assigned Act No. 8-344 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-13. — Law 9-13 was introduced in Council and assigned Bill No. 9-48, which was referred to the Committee on Education and Libraries. The Bill

was adopted on first and second readings on April 9, 1991, and May 7, 1991, respectively. Signed by the Mayor on May 17, 1991, it was

assigned Act No. 9-31 and transmitted to both Houses of Congress for its review.

§ 38-1202.05. Consolidation of existing public institutions of postsecondary education.

The Trustees shall by August 1, 1977, consolidate the existing public institutions of postsecondary education in the District of Columbia under a single management system to be called the University of the District of Columbia, with several programs, schools, colleges, institutes, campuses and other components that offer a comprehensive program of public postsecondary education. The institutions of public postsecondary education in the District of Columbia existing immediately prior to such consolidation shall be deemed abolished on the effective date of the consolidation. Thereafter, any reference in any law, rule, regulation, or other document of the United States or of the District of Columbia to such institutions shall be deemed to be a reference to the University of the District of Columbia.

(Oct. 26, 1974, 88 Stat. 1426, Pub. L. 93-471, title II, § 205; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2922; Apr. 6, 1977, D.C. Law 1-99, § 2(a), 23 DCR 8729.)

Prior Codifications. — 1981 Ed., § 31-1515.

1973 Ed., § 31-1715.

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 1-99. — For legislative history of D.C. Law 1-99, see Historical and Statutory Notes following § 38-1202.01.

CASE NOTES

In general.

Board of Trustees of University of District of Columbia was arm of government and was not subject to diversity jurisdiction in personal injury action, even though Board had extensive corporate powers and separate fund; District committed itself to funding university and

would ultimately pay any judgment against Board. 18 U.S.C. § 1332; U.S.C. Const. Amend. 11; D.C. Code 1981, §§ 12-309, 31-1501, 31-1511(a-c), 31-1515, 31-1516(2)(B), (2)(C)(ii, iii), (4-7, 9, 15), 31-1533(c); §§ 31-1531, 31-1534 (repealed). *Krieger v. Trane Co.*, 765 F. Supp. 756, 1991 U.S. Dist. LEXIS 7073 (1991).

§ 38-1202.06. Duties of Trustees.

It shall be the duty of the Trustees to:

(1) Review the existing public institutions of postsecondary education with respect to:

- (A) Accreditation;
- (B) Present programs and functions;
- (C) Actual and potential capabilities; and
- (D) Educational policies and procedures;

(2)(A) Establish the University of the District of Columbia consisting of, but not limited to, 2 major components, liberal and fine arts and vocational and technical education;

(B) Prepare and, from time to time, revise a long-range plan for the development of the University which shall include the type and scope of programs offered and envisioned. Such plan shall also include the development, expansion, integration, coordination and efficient use of the facilities, physical plant, curricula, and standards of public postsecondary education. Such initial plan and any revisions thereof shall be made available to the public, the Council of the District of Columbia and the Mayor for a period of not less than 60 days prior to its implementation and the Trustees shall hold such hearings and public forums as may be necessary to receive public response and comment on such plans;

(C) Operate a public law school component, established under subchapter VI of this unit, in a manner that shall:

(i) Maintain any accreditation necessary to qualify the graduates of the School of Law to take the bar examinations of the District of Columbia and of the several states;

(ii) Represent, to the maximum extent feasible, the legal needs of low-income persons, particularly those who reside in the District of Columbia, through the training of law students; and

(iii) Recruit and enroll, to the maximum extent feasible, students from racial, ethnic, and other population groups that in the past have been underrepresented among persons admitted to the bar of the District of Columbia and the several states;

(3) Establish or approve policies and procedures governing admissions, curricula, programs, graduation, the awarding of degrees, and general policy making for the components of the University;

(4) Prepare and submit to the Mayor, on a date fixed by the Mayor, an annual budget for each fiscal year. Such budget shall include a proposed financial operating plan for such fiscal year, and a capital and educational improvements plan for such fiscal year and the succeeding 4 fiscal years for the University. The Mayor and the Council shall, after review and consideration of the budget submitted by the Trustees, establish the maximum amount of funds for each of the major components of the University and the total University budget which will be allocated to the Trustees;

(5) Transfer during the fiscal year any appropriation balance available for one item of appropriation to another item of appropriation or to a new program designated by action of the Trustees; provided, that any such action under this paragraph shall be taken in accordance with the provisions of the reprogramming policy and laws of the District of Columbia;

(6) Repealed;

(7) Enter into negotiations and binding contracts in accordance with District contracting and procurement rules and regulations to perform organized research, training and demonstrations on a reimbursable basis for the United States and the government of the District of Columbia and other public and private agencies;

(8) Fix tuition, and fees in addition to tuition, to be paid by resident and nonresident students attending the University; provided, that such tuition and fees are adopted by the Trustees in accordance with the provisions of § 2-505(a);

(9) Deposit all revenues and receipts of any nature whatsoever derived from tuition and fees received from students with the District of Columbia Treasurer under regulations established by the Mayor, which revenues shall be accounted for in the Municipal University Fund as a separate revenue source allocated to provide authority for such University purposes as the Board of Trustees may approve;

(10) Select, appoint, and fix the compensation for a Chief Executive Officer of the University and of such staff for the Board of Trustees as it deems necessary and approve the appointment and compensation of the academic and administrative heads of each of the components of the University and of such other officers as it deems necessary, including legal counsel, subject to the provisions of Chapter 6 of Title 1. The Chief Executive Officer shall serve at the pleasure of the Trustees;

(11) Submit recommendations to the Mayor and the Council of the District of Columbia from time to time relating to legislation affecting the administration and programs of the University;

(12) Develop and define, in conjunction with the faculty, a policy governing academic freedom for the University and establish mechanisms to ensure its protection and enforcement;

(13) Perform such duties and make such rules and regulations as may be necessary to carry out the purposes of this unit;

(14) Seek to establish with the Board a Coordination Committee to determine areas of cooperation, coordination and assistance;

(15) Utilize the services and seek the counsel and advice of the District of Columbia Commission on Postsecondary Education in planning the development of a program for public postsecondary education in the District of Columbia;

(16) Generally determine, control, supervise, manage, and govern all affairs of the University;

(17) Repealed;

(18) Establish health policies and procedures for adult students as provided in Chapter 6 of this title;

(19)(A) Coordinate the state system, in accordance with federal requirements, for pre-k teacher preparation, professional development, and training;

(B) Establish a collaborative of District of Columbia colleges and universities to craft a higher education incentive grant program and a scholarship program and develop a pre-k workforce development plan, as required by § 38-274.01; and

(C) Establish the higher education incentive grant program and the scholarship program for the purpose of increasing the number of highly qualified pre-k teachers and assistant teachers who are eligible to teach in a high-quality pre-k classroom as of September 1, 2014, as set forth in § 38-274.01; and

(20)(A) Procure all goods and services necessary to operate the University independent of the Office of Contracting and Procurement and the requirements of Unit A of Chapter 3 of Title 2, except as specified in § 2-303.20; provided, that the Council has approved proposed rules governing the procurement of goods and services.

(B) Submit any proposed rules governing the procurement of goods and services promulgated subsequent to October 9, 2010, to the Council for its review and approval.

(Oct. 26, 1974, 88 Stat. 1427, Pub. L. 93-471, title II, § 206; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2923; Mar. 3, 1979, D.C. Law 2-139, § 3204(f), 25 DCR 5740; Aug. 22, 1980, D.C. Law 3-82, § 3(a), 27 DCR 2647; Feb. 9, 1984, D.C. Law 5-47, § 2, 30 DCR 5641; Feb. 24, 1987, D.C. Law 6-177, § 2(c), (d), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 301(c), 43 DCR 2978; Apr. 12, 1997, D.C. Law 11-259, § 314(b), 44 DCR 1423; Apr. 20, 1999, D.C. Law 12-231, § 2(a), 46 DCR 487; Mar. 8, 2011, D.C. Law 18-285, § 3, 57 DCR 11005; Mar. 8, 2011, D.C. Law 18-286, § 2(b), 57 DCR 11012.)

Cross references. — Regulated non-health related occupations and professions, license taxes, see § 47-2853.04.

Section references. — This section is referred to in §§ 1-636.02 and 38-1202.01.

Prior Codifications. — 1981 Ed., § 31-1516.

1973 Ed., § 31-1716.

Effect of amendments. — D.C. Law 18-285 added par. (19).

D.C. Law 18-286, in par. (15), deleted “and” from the end; rewrote par. (16); repealed par. (17); in par. (18), substituted “; and” for a period at the end; and added par. (20).

Temporary Amendment of Section. — Section 2(b) of D.C. Law 18-92 deleted “and” from the end of par. (15), rewrote par. (16) to read as follows:

“(16) Generally determine, control, supervise, manage, and govern all affairs of the University of the District of Columbia and, pursuant to paragraph (19) of this section, adopt policies and regulations considered necessary for efficient governance;”; repealed par. (17); in par. (18), substituted “; and” for a period; and added par. (19) to read as follows:

“(19)(A) Procure all goods and services necessary to operate the University independent of the Office of Contracting and Procurement and the requirements of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.) (‘Act’), except as specified in section 320 of the Act; provided, that the Council has approved proposed rules governing the procurement of goods and services.

“(B) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day review period, the proposed rules shall be deemed disapproved.”

Section 5(b) of D.C. Law 18-92 provided that the act shall expire after 225 days of its having taken effect.

Section 3 of D.C. Law 18-142 added par. (19) to read as follows:

“(19)(A) Coordinate the state system, in accordance with federal requirements, for pre-k teacher preparation, professional development, and training;

“(B) Establish a collaborative of District of Columbia colleges and universities to craft a higher education incentive grant program and a scholarship program and develop a pre-k workforce development plan, as required by section 401 of the Pre-k Enhancement and Expansion Amendment Act of 2008, effective July 18, 2008 (D.C. Law 17-202; D.C. Official Code § 38-274.01)(Pre-k act”); and

“(C) Establish the higher education incentive grant program and the scholarship program for the purpose of increasing the number of highly-qualified pre-k teachers and assistant teachers who are eligible to teach in a high-quality pre-k classroom as of September 1, 2014, as set forth in section 401 of the Pre-k act.”.

Section 5(a) of D.C. Law 18-142 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 18-282, in par. (15), deleted “and” at the end; amended par. (16) to read as follows:

“(16) Generally determine, control, supervise, manage, and govern all affairs of the University;”; repealed par. (17); in par. (18), substituted “; and” for a period at the end; and added par. (19) to read as follows:

“(19)(A) Procure all goods and services necessary to operate the University independent of the Office of Contracting and Procurement and the requirements of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.) (‘Act’), except as specified in section 320 of the Act; provided, that the Council has approved proposed rules governing the procurement of goods and services.

“(B) Submit any proposed rules governing the procurement of goods and services promulgated subsequent to the effective date of the Univer-

sity of the District of Columbia Board of Trustees Quorum and Contracting Reform Emergency Amendment Act of 2010, passed on emergency basis on September 21, 2010 (Enrolled version of Bill 18-995), to the Council for its review and approval.”.

Section 5(a) of D.C. Law 18-282 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 301(c) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(c) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

For temporary (90 day) amendment of section, see § 2(b) of University of the District of Columbia Procurement Authority Emergency Amendment Act of 2009 (D.C. Act 18-200, October 10, 2009, 56 DCR 8137).

For temporary (90 day) amendment of section, see § 3 of Pre-K Acceleration and Clarification Emergency Amendment Act of 2009 (D.C. Act 18-304, January 28, 2010, 57 DCR 1475).

For temporary (90 day) amendment of section, see § 2(b) of University of the District of Columbia Procurement Authority Emergency Amendment Act of 2010 (D.C. Act 18-467, July 7, 2010, 57 DCR 6914).

For temporary (90 day) amendment of section, see § 2(b) of University of the District of Columbia Board of Trustees Quorum and Contracting Reform Emergency Amendment Act of 2010 (D.C. Act 18-542, October 9, 2010, 57 DCR 9627).

For temporary (90 day) amendment of section, see § 3 of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-602, December 1, 2010, 57 DCR 11039).

For temporary (90 day) amendment of section, see § 2(b) of University of the District of Columbia Board of Trustees Quorum and Contracting Reform Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-661, December 30, 2010, 58 DCR 70).

For temporary (90 day) amendment of section, see § 3 of Pre-k Acceleration and Clarification Congressional Review Emergency Amendment Act of 2010 (D.C. Act 19-4, February 11, 2011, 58 DCR 1399).

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 38-1202.04.

Legislative history of Law 3-82. — Law 3-82 was introduced in Council and assigned Bill No. 3-3, which was referred to the Committee of the Whole. The Bill was adopted on first, amended first and second readings on April 22, 1980, May 6, 1980, and May 20, 1980, respectively. Signed by the Mayor on June 12, 1980, it was assigned Act No. 3-196 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-47. — Law 5-47 was introduced in Council and assigned Bill No. 5-218, which was referred to the Committee on Education. The Bill was adopted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 21, 1983, it was assigned Act No. 5-73 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 38-1205.01.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

Legislative history of Law 11-259. — For legislative history of D.C. Law 11-259, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 12-231. — Law 12-231, the “Adult Education Designation Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-775, which was referred to the Committee on Education, Libraries, and Recreation. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 11, 1998, it was assigned Act No. 12-544 and transmitted to both Houses of Congress for its review. D.C. Law 12-231 became effective on April 20, 1999.

Legislative history of Law 18-285. — For history of Law 18-285, see notes under § 38-271.01.

Legislative history of Law 18-286. — For history of Law 18-286, see notes under § 38-1202.01.

Resolutions. — Resolution 18-351, the “University of the District of Columbia Procurement Rules Emergency Approval Resolution of 2009,” was approved effective December 15, 2009.

CASE NOTES

In general.

Board of Trustees of University of District of Columbia was arm of government and was not subject to diversity jurisdiction in personal injury action, even though Board had extensive corporate powers and separate fund; District committed itself to funding university and

would ultimately pay any judgment against Board. 18 U.S.C. § 1332; U.S.C. Const.Amend. 11; D.C. Code 1981, §§ 12-309, 31-1501, 31-1511(a-c), 31-1515, 31-1516(2)(B), (2)(C)(ii, iii), (4-7, 9, 15), 31-1533(c); §§ 31-1531, 31-1534 (repealed). *Krieger v. Trane Co.*, 765 F. Supp. 756, 1991 U.S. Dist. LEXIS 7073 (1991).

§ 38-1202.07. Personnel System [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title II, § 207, 88 Stat. 1428; Sept. 9, 1975, D.C. Law 1-12, § 3(c), 22 DCR 1807; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2927; Mar. 3, 1979, D.C. Law 2-139, § 3204(f), 25 DCR 5740.)

Prior Codifications. — 1973 Ed., § 31-1717.

§ 38-1202.08. Transfer of functions, personnel, property, assets, and liabilities.

The Board of Higher Education and the Vocational Board shall be abolished on the day that the Board of Trustees convenes its 1st meeting. Except as provided by this unit all functions, powers, and duties of the Board of Higher Education and the Vocational Board under Chapter 11 of this title shall be vested in and exercised by the Trustees. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds and assets and liabilities of the Board of Higher Education and Vocational Board are authorized to be transferred to the Trustees, except the functions of licensing institutions to confer degrees as authorized by this unit. All rules, orders, obligations, determinations and any other understandings of the Board of Higher Education and the Board of Vocational Education shall remain in effect until such time as they may be lawfully amended, modified or repealed by the Trustees.

(Oct. 26, 1974, 88 Stat. 1428, Pub. L. 93-471, title II, § 208; as added Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2929; July 2, 2011, D.C. Law 18-378, § 3(bb), 58 DCR 1720.)

Cross references. — Transfer of functions from Office of Youth Opportunity Services to School of Continuing Education, Federal City College, University of the District of Columbia, see § 2-1503.

Prior Codifications. — 1981 Ed., § 31-1517.

1973 Ed., § 31-1718.

Effect of amendments. — D.C. Law 18-378, in subsec. (a)(1), substituted “this unit” for “§ 29-615”.

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Histor-

ical and Statutory Notes following § 38-1202.01.

Legislative history of Law 18-378. — Law 18-378, the “District of Columbia Official Code Title 29 (Business Organizations) Enactment Act of 2009”, was introduced in Council and assigned Bill No. 18-500, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 27, 2011, it was assigned Act No. 18-724 and transmitted to both Houses

of Congress for its review. D.C. Law 18-378 became effective on July 2, 2011.

§ 38-1202.09. Establishment as land-grant university.

(a) In the administration of: (1) the Act of August 30, 1890 (7 U.S.C. §§ 321 to 326, and 328) (known as the Second Morrill Act); (2) the 10th paragraph under the heading "Emergency Appropriations" in the Act of March 4, 1907 (7 U.S.C. § 322) (known as the Nelson Amendment); (3) § 22 of the Act of June 29, 1935 (7 U.S.C. § 329) (known as the Bankhead-Jones Act); (4) the Act of March 4, 1940 (7 U.S.C. § 331); and (5) the Agricultural Marketing Act of 1946 (7 U.S.C. §§ 1621 to 1627); the University shall be considered to be a university established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308) (known as the First Morrill Act); and the term "state" as used in the laws and provisions of law listed in clauses (1), (2), (3), (4) and (5) of this subsection shall include the District of Columbia.

(b) In the administration of the Act of May 8, 1914 (7 U.S.C. §§ 341 to 346, and 347a to 349) (known as the Smith-Lever Act):

(1) The University shall be considered to be a university established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. §§ 301 to 305, 307, and 308); and

(2) The term "state" as used in such Act of May 8, 1914, shall include the District of Columbia.

(c) In lieu of an authorization of appropriations for the District of Columbia under § 3(c) of such Act of May 8, 1914, there is authorized to be appropriated such sums as may be necessary to provide cooperative agricultural extension work in the District of Columbia under such Act. Any reference in such Act (other than § 3(c) thereof) to funds appropriated under such Act shall in the case of the District of Columbia be considered a reference to funds appropriated under this subsection.

(d) Four per centum of the sums appropriated under subsection (c) of this section for each fiscal year shall be allotted to the Federal Extension Service of the Department of Agriculture for administrative, technical, and other services provided by the Service in carrying out the purposes of this section.

(e) Reserved.

(Oct. 26, 1974, 88 Stat. 1428, Pub. L. 93-471, title II, § 208; renumbered § 209, Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2911; May 22, 2008, 122 Stat. 923, Pub. L. 110-234, § 7417(a).)

Section references. — This section is referred to in § 38-1202.10.

Prior Codifications. — 1981 Ed., § 31-1518.

1973 Ed., § 31-1719.

Effect of amendments. — Pub. L. 110-234, in subsec. (b)(2), deleted "except that the District of Columbia shall not be eligible to receive any sums appropriated under § 3 of

such act" following "Columbia"; and, in subsec. (c), deleted the former second sentence, which had read as follows: "Such sums may be used to pay no more than one half of the total cost of providing such extension work."

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Effective date. — Section 7417(b) of Pub. L. 110-234 provided that the amendments made by this section take effect on October 1, 2008.

References in text. — “Section 3 of such Act,” referred to in subsection (b)(2) and in the

first sentence of (c) of this section, is codified at 7 U.S.C. § 343.

Editor’s notes. — Investment Advisory Committee for Land Grants Funds established: See Mayor’s Order 83-129, May 17, 1983.

§ 38-1202.10. State consent.

The enactment of this unit shall, as respects the District of Columbia, be deemed to satisfy any requirement of state consent contained in any of the laws or provisions of law referred to in § 38-1202.09.

(Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title II, § 209; renumbered § 210, Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2911.)

Prior Codifications. — 1981 Ed., § 31-1519.

1973 Ed., § 31-1720.

Legislative history of Law 1-36. — For

legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

§ 38-1202.11. Transfer of powers of Board of Governors.

(a) All functions, powers, and duties of the Board of Governors of the District of Columbia School of Law established by § 38-1205.03 [repealed] shall be vested in and exercised by the Trustees. The District of Columbia School of Law shall be merged with and become a component of the University of the District of Columbia, as a single independent agency of the District of Columbia under the authority and jurisdiction of the Trustees.

(b) All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds and assets and liabilities of the Board of Governors are transferred to the Trustees. All rules, orders, obligations, determinations, and any other understandings of the Board of Governors shall remain in effect until such time as they may be lawfully amended, modified, or repealed by the Trustees. Thereafter, any reference in any law, rule, regulation, or other document of the United States or the District of Columbia to the Board of Governors shall be deemed to be a reference to the Trustees, and any reference in any law, rule, regulation, or other document of the United States or the District of Columbia to the District of Columbia School of Law shall be deemed to be a reference to the University of the District of Columbia School of Law.

(c) The Trustees shall be bound by the terms of the Merger Agreement between the University of the District of Columbia and the District of Columbia School of Law, signed November 6, 1995.

(Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title 11, § 211, as added, Aug. 1, 1996, D.C. Law 11-152, § 301(d), 43 DCR 2978.)

Cross references. — Regulated non-health related occupations and professions, license taxes, see § 47-2853.04.

Prior Codifications. — 1981 Ed., § 31-1520.

Emergency legislation. — For temporary addition of section, see § 301(d) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, Apr. 26, 1996, 43 DCR 2412), and § 201(d) of the Fiscal Year 1996

Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provided for the application of the act.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

References in text. — Section 38-1205.03, referred to in (a), was repealed by D.C. Law 11-152, 43 DCR 2978.

Editor's notes. — Law School buildings: For provisions directing the District of Columbia School of Law to submit any lease or building purchase agreement to the Council for review, see § 702 of D.C. Law 10-128.

§ 38-1202.12. Supervision of adult education program [Repealed].

Repealed.

(Oct. 26, 1974, 88 Stat. 1423, Pub. L. 93-471, title II, § 212, as added Apr. 20, 1999, D.C. Law 12-231, § 2(b), 46 DCR 487; June 12, 2007, D.C. Law 17-9, § 303, 54 DCR 4102.)

Prior Codifications. — 1981 Ed., § 31-1520a.

Temporary Addition of Section. — Section 2 of D.C. Law 12-183 added this section.

Section 4(b) of D.C. Law 12-183 provided that this act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary addition of section, see § 2 of the Adult Education Designation Emergency Amendment Act of 1998 (D.C. Act 12-449, September 18, 1998, 45 DCR 6667), and § 2 of the Adult Education Designation Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-598, January 20, 1999, 45 DCR 1144).

Legislative history of Law 12-183. — Law 12-183, the “Adult Education Designation Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-742. The Bill was adopted on first and second readings on July 30, 1998, and September 22, 1998,

respectively. Signed by the Mayor on October 1, 1998, it was assigned Act No. 12-454 and transmitted to both Houses of Congress for its review. D.C. Law 12-183 became effective on March 26, 1999.

Legislative history of Law 12-231. — Law 12-231, the “Adult Education Designation Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-775, which was referred to the Committee on Education, Libraries, and Recreation. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 11, 1998, it was assigned Act No. 12-544 and transmitted to both Houses of Congress for its review. D.C. Law 12-231 became effective on April 20, 1999.

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-103.

Subchapter III. Authorizations.

§ 38-1203.01. Appropriations; purchase and sale of books.

(a) There are authorized to be appropriated out of any money in the Treasury to the credit of the District of Columbia such sums as may be necessary for carrying out the purposes of this unit.

(b) The Trustees are authorized to purchase and sell books at such prices as they determine necessary to approximate the cost of the sale of such books, excluding personnel and overhead costs. All receipts from the sale of such books shall be deposited with the D.C. Treasurer and accounted for within the Municipal University Fund as a separate revenue source allocable to provide authority for the purchase of books as the Board of Trustees may approve. Any unexpended balance at the end of fiscal year 1981 or each succeeding fiscal year thereafter shall be reserved as a restricted fund balance and used to

provide authority to expend for subsequent years, for the purchase of books, subject to the direction of the Board of Trustees. Such funds which are available from the general revenues of the District of Columbia and appropriated in fiscal year 1981 for the purpose of the procurement of books by the Trustees and receipts from the sale of such books shall also be deposited with the D.C. Treasurer and accounted for in an account within the Municipal University Fund; provided, that the base of the budget of the University shall be reduced in fiscal year 1982 by an amount equal to the funds appropriated in fiscal year 1981 for the purpose of procurement of such books and receipts from the sale of such books.

(Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title III, § 301; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2930; Sept. 23, 1978, D.C. Law 2-111, § 3, 25 DCR 1462; Aug. 22, 1980, D.C. Law 3-82, § 3(b), 27 DCR 2647.)

Prior Codifications. — 1981 Ed., § 31-1521.

1973 Ed., § 31-1721.

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 2-111. — Law 2-111 was introduced in Council and assigned Bill No. 2-334, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on June 13, 1978 and June 27, 1978, respectively. Signed by the Mayor on July 17, 1978, it was assigned Act No. 2-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-82. — For legislative history of D.C. Law 3-82, see Historical and Statutory Notes following § 38-1202.06.

Subchapter IV. Miscellaneous.

§ 38-1204.01. Meetings of Trustees.

(a)(1) The chairperson or a majority of the members of the Trustees may convene a meeting. The Trustees shall hold meetings periodically, as scheduled by the Trustees; provided, that at least 6 meetings shall be held each year. All meetings shall be held in the District of Columbia. Except as provided in paragraph (2) of this subsection, meetings shall be noticed to the public and open to the public.

(2) The Trustees may convene in executive session by a vote of a majority of the voting members serving to take action on matters that:

(A) Relate to personnel or to practices of the Trustees;

(B) Would result in the disclosure of matters specifically exempted from disclosure by statute; or

(C) Would result in the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(3) The Trustees shall keep the minutes of each meeting of the Trustees and shall make the minutes of each public meeting available to the public for inspection and distribution.

(b) No official action may be taken at a meeting or an executive session unless a quorum is present; except, that a lesser number may hold a hearing. A majority of the voting members serving on the Board of Trustees shall constitute a quorum.

(Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title IV, § 401; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2931; Mar. 3, 1979, D.C. Law 2-132, § 2, 25 DCR 3489; Mar. 8, 2011, D.C. Law 18-286, § 2(c), 57 DCR 11012.)

Prior Codifications. — 1981 Ed., § 31-1531.

1973 Ed., § 31-1731.

Effect of amendments. — D.C. Law 18-286 rewrote the section, which formerly read:

“Meetings may be called by the Chairperson or a majority of the members of the Trustees. No official action may be taken by the Trustees except at a meeting of the Trustees at which a quorum is present. A total of 8 of the voting members of the Board of Trustees shall constitute a quorum for the transaction of business, except a lesser number may hold hearings. Each meeting of the Trustees shall be open to the public and held in the District of Columbia with appropriate notice of each such meeting given to the general public, except a majority of the Trustees may elect to go into executive session to take action on personnel matters. The Trustees shall meet at stated times established by the Board of Trustees, but not less frequently than 4 times a year.”

Temporary Amendment of Section. — Section 2(b) of D.C. Laws 13-095, in the third sentence, substituted “A majority” for “A total of 8”.

Section 6(b) of D.C. Laws 13-095 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 18-91 substituted “A majority of the voting members of the Board of Trustees shall constitute a quorum for the transaction of business” for “A total of 8 of the voting members of the Board of Trustees shall constitute a quorum for the transaction of business”.

Section 4(b) of D.C. Law 18-91 provided that the act shall expire after 225 days of its having taken effect.

Section 2(c) of D.C. Law 18-282 amended the section to read as follows:

“Sec. 401. Meetings of Trustees.

“(a)(1) The chairperson or a majority of the members of the Trustees may convene a meeting. The Trustees shall hold meetings periodically, as scheduled by the Trustees; provided, that at least 6 meetings shall be held each year. All meetings shall be held in the District of Columbia. Except as provided in paragraph (2) of this subsection, meetings shall be noticed to the public and open to the public.

“(2) The Trustees may convene in executive session by a vote of a majority of the voting members serving to take action on matters that:

“(A) Relate to personnel or to practices of the Trustees;

“(B) Would result in the disclosure of matters specifically exempted from disclosure by statute; or

“(C) Would result in the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

“(3) The Board shall keep the minutes of each meeting of the Board and shall make the minutes of each public meeting available to the public for inspection and distribution.

“(b) No official action may be taken at a meeting or an executive session unless a quorum is present; except, that a lesser number may hold a hearing. A majority of the voting members serving on the Board of Trustees shall constitute a quorum.”

Section 5(a) of D.C. Law 18-282 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(b) of the Board of Trustees of the University of the District of Columbia Emergency Amendment Act of 1999 (D.C. Act 13-210, December 17, 1999, 47 DCR 9).

For temporary (90-day) amendment of section, see § 2(b) of the Board of Trustees of the University of the District of Columbia Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-280, March 7, 2000, 47 DCR 2022).

For temporary (90-day) amendment of section, see § 2(b) of the Board of Trustees of the University of the District of Columbia Board Emergency Amendment Act of 2000 (D.C. Act 13-372, June 26, 2000, 47 DCR 5844).

For temporary (90 day) amendment of section, see § 2 of University of the District of Columbia Board of Trustees Quorum Emergency Amendment Act of 2009 (D.C. Act 18-199, October 10, 2009, 56 DCR 8135).

For temporary (90 day) amendment of section, see § 2 of University of the District of Columbia Board of Trustees Quorum Emergency Amendment Act of 2010 (D.C. Act 18-459, July 7, 2010, 57 DCR 6056).

For temporary (90 day) amendment of section, see § 2(c) of University of the District of Columbia Board of Trustees Quorum and Contracting Reform Emergency Amendment Act of 2010 (D.C. Act 18-542, October 9, 2010, 57 DCR 9627).

For temporary (90 day) amendment of section, see § 2(c) of University of the District of Columbia Board of Trustees Quorum and Contracting Reform Congressional Review Emer-

gency Amendment Act of 2010 (D.C. Act 18-661, December 30, 2010, 58 DCR 70).

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 2-132. — Law 2-132 was introduced in Council and assigned Bill No. 2-258, which was referred to the Committee on Education, Recreation and Youth

Affairs. The Bill was adopted on first and second readings on July 25, 1978, and September 19, 1978, respectively. Signed by the Mayor on October 13, 1978, it was assigned Act No. 2-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-286. — For history of Law 18-286, see notes under § 38-1202.01.

§ 38-1204.02. Advisory committees.

The Trustees shall appoint such advisory committees as are necessary to advise on educational policy. Such advisory committees may consist of members of the Trustees, students, faculty members, parents, and governmental, educational, business, industrial, labor, and community representatives.

(Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title IV, § 402; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2931.)

Prior Codifications. — 1981 Ed., § 31-1532.

1973 Ed., § 31-1732.

Legislative history of Law 1-36. — For

legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

§ 38-1204.03. Gifts and contributions.

(a) The Trustees may accept services, moneys, gifts, endowments, donations, and bequests. The Trustees may in their discretion retain or not retain such in the form in which they are made.

(b) The Trustees shall establish in 1 or more financial institutions in the District of Columbia the District of Columbia Postsecondary Education Fund. There shall be deposited in such fund all gifts and contributions in whatever form, funds in receipt of services rendered, other than tuition, and all moneys not included in the annual operating and capital and educational improvements funds appropriated by Congress. Moneys deposited therein shall be available for investment and shall be distributed in such amounts and in such manner as the Trustees may determine. The Trustees are authorized to administer such fund in whatever manner the Trustees may deem wise and prudent, provided that such administration is lawful and does not impose any fiscal burden on the District of Columbia.

(b-1) The Trustees shall establish in one or more financial institutions in the District of Columbia a District of Columbia School of Law Fund ("Fund"). There shall be deposited in the Fund all gifts and contributions in whatever form, funds received for services rendered by the School of Law, other than tuition, and all monies dedicated to the support of the School of Law not included in the annual operating and capital improvement funds appropriated for the University by Congress. Subject to the applicable laws relating to the appropriation of District funds, the Trustees are authorized to administer the Fund in whatever manner the Trustees may deem wise and prudent, provided that the administration is lawful, in accordance with the fiduciary responsi-

bilities of the Trustees, and does not impose any financial burden on the District of Columbia.

(c) It is not the intent that any income derived as a result of such funds shall take the place of any District or federal appropriations or any part thereof but that it shall supplement such appropriations to the end that the University may improve and increase its functions, may enlarge its areas of service and may become more useful to a greater number of people. Nothing in this section shall be construed to prevent the Trustees from receiving gifts, donations, and bequests from any source and from using the same for such lawful purposes as the donor or donors designate.

(Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title IV, § 403; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2932; Aug. 1, 1996, D.C. Law 11-152, § 301(e), 43 DCR 2978.)

Section references. — This section is referred to in § 38-1202.01.

Prior Codifications. — 1981 Ed., § 31-1533.

1973 Ed., § 31-1733.

Emergency legislation. — For temporary amendment of section, see § 301(e) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(e) of the Fiscal Year 1996 Budget Support Congressional Review Emer-

gency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

§ 38-1204.04. Annual report.

The Trustees shall make an annual report to the general public, Mayor, Council, and the Congress on December 31st of each year on the operation of programs and the expenditure of all funds for public postsecondary education in the District of Columbia. Such annual report shall include, but not be limited to, the source, amount, distribution and expenditure of all funds whatever the source; and general student enrollment data, including, but not limited to, race, sex, age, major area of study, previous and current residency and upon graduation or termination of study, employment placement data (consistent with existing statutes and Department of Education regulations).

(Oct. 26, 1974, 88 Stat. 1430, Pub. L. 93-471, title IV, § 404; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2933.)

Prior Codifications. — 1981 Ed., § 31-1534.

1973 Ed., § 31-1734.

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Change in Government. — “Department of Education,” referred to in the last sentence of this section, was substituted for “Department of Health, Education and Welfare,” pursuant to § 301 of the Act of October 17, 1979, 93 Stat. 677, Pub. L. 96-88.

§ 38-1204.05. Transfer of appropriation balance; power to contract; Material Fund.

(a) The Board of Education of the District of Columbia is authorized to

transfer during the fiscal year any appropriation balance available for one item of appropriation to another item of appropriation or to a new program designated by action of the Board; provided, that any such action under this subsection shall be taken in accordance with the reprogramming policy and laws of the District of Columbia.

(b) Repealed.

(c) There is established, in the General Fund, an account entitled the Material Fund which shall be limited to public school use. The Board of Education is authorized to transfer its authority from the Material Fund to an internal service fund, which transferred authority if not obligated by the end of the first quarter of fiscal year 1981, or each succeeding fiscal year thereafter, shall expire.

(Oct. 26, 1974, 88 Stat. 1430, Pub. L. 93-471, title IV, § 405; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2934; Mar. 3, 1979, D.C. Law 2-139, § 3204(b), 25 DCR 5740; Aug. 22, 1980, D.C. Law 3-82, §§ 3(c), 27 DCR 2647; May 23, 1990, D.C. Law 8-131, § 2, 37 DCR 2211; June 22, 1990, D.C. Law 8-143, § 2, 37 DCR 2972; Apr. 12, 1997, D.C. Law 11-259, § 314(c), 44 DCR; Oct. 19, 2000, D.C. Law 13-172, § 706, 47 DCR 6308.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 31-1535.

1973 Ed., § 31-1735.

Effect of amendments. — D.C. Law 13-172 deleted former subsec. (b) providing: "Except as provided in § 1-336 § 1-301.91, 2001 Ed., the Office of Contracting and Procurement shall contract on behalf of the Board of Education for procurement of goods or services necessary for the performance of Board of Education functions."

Emergency legislation. — For temporary (90-day) amendment of section, see § 706 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 706 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 1-36. — For legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 38-1202.04.

Legislative history of Law 3-82. — For legislative history of D.C. Law 3-82, see Historical

and Statutory Notes following § 38-1202.06.

Legislative history of Law 8-131. — Law 8-131 was introduced in Council and assigned Bill No. 8-529. The Bill was adopted on first and second readings on February 27, 1990, and March 13, 1990, respectively. Signed by the Mayor on March 27, 1990, it was assigned Act No. 8-183 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-143. — Law 8-143 was introduced in Council and assigned Bill No. 8-504, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 27, 1990, and April 10, 1990, respectively. Signed by the Mayor on April 26, 1990, it was assigned Act No. 8-199 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-258. — For legislative history of D.C. Law 11-258, see Historical and Statutory Notes following § 38-1202.01.

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

§ 38-1204.06. Authority of Council.

Notwithstanding any other provision of law, or any rule of law, nothing in this unit shall be construed as limiting the authority of the Council to enact any act or resolution, after January 2, 1975, pursuant to the District of Columbia Home Rule Act with respect to any matter covered by this unit.

(Oct. 26, 1974, 88 Stat. 1430, Pub. L. 93-471, title IV, § 406; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2934.)

Prior Codifications. — 1981 Ed., § 31-1536.

1973 Ed., § 31-1736.

Emergency legislation. — For temporary addition of section, see § 301(f) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and.

Legislative history of Law 1-36. — For

legislative history of D.C. Law 1-36, see Historical and Statutory Notes following § 38-1202.01.

References in text. — “The District of Columbia Home Rule Act,” referred to near the end of the section, is the Act of December 24, 1973, 87 Stat. 774, Pub. L. 93-198, which is codified at Chapter 2 of Title 1, D.C. Official Code.

§ 38-1204.07. Rules for preferential tuition rates for District residents.

(a) Within 90 days of August 1, 1996, the Trustees will consider and adopt uniform rules applicable to students of the University, including the School of Law, setting forth the requirements for preferential tuition rates for bona fide residents of the District of Columbia and requirements for recognition of changes in residency status.

(b) The Trustees shall establish the tuition rate for nonresident students at the University of the District of Columbia flagship undergraduate program, graduate program, and the Community College of the District of Columbia, at a level no lower than the nonresident tuition rate charged at comparable public institutions of higher education.

(Oct. 26, 1974, 88 Stat. 1429, Pub. L. 93-471, title IV, § 407, as added Aug. 1, 1996, D.C. Law 11-152, § 301(f), 43 DCR 2978; Sept. 14, 2011, D.C. Law 19-21, § 4062, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 31-1537.

Effect of amendments. — D.C. Law 19-21 designate the existing text as subsec. (a); and added subsec. (b).

Emergency legislation. — For temporary addition of section, see § 301(f) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(f) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provided for the application of the act.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

Short title. — Short title: Section 4061 of D.C. Law 19-21 provided that subtitle G of title IV of the act may be cited as “University of the District of Columbia Nonresident Tuition Amendment Act of 2011”.

Subchapter V. Establishment of Public School of Law.

§ 38-1205.01. Purposes.

In enacting this subchapter, the Council of the District of Columbia supports the following statutory purposes:

(1) To authorize the establishment of a public school of law for the District of Columbia; and

(2) To ensure that the programs and clinical operations of the School of Law of Antioch University, in operation as of February 24, 1987, are adopted initially as the programs and clinical operations of the public School of Law for the District of Columbia.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 501, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 2(a), 36 DCR 8117.)

Prior Codifications. — 1981 Ed., § 31-1541.

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Public School of Law Amendment Emergency Act of 1990 (D.C. Act 8-151, January 26, 1990, 37 DCR 1060).

Legislative history of Law 6-177. — Law 6-177, "Authorization for the Establishment of a Public School of Law for the District of Columbia Amendment Act of 1986," was introduced in Council and assigned Bill No. 6-472, which was referred to the Committee on Education. The Bill was adopted on first and second readings on September 23, 1986, and October 7,

1986, respectively. Approved without the signature of the Mayor on October 31, 1986, it was assigned Act No. 6-227 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-74. — Law 8-74 was introduced in Council and assigned Bill No. 8-356, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on October 24, 1989, and November 7, 1989, respectively. Signed by the Mayor on November 16, 1989, it was assigned Act No. 8-114 and transmitted to both Houses of Congress for its review.

§ 38-1205.02. Definitions. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 502, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 2(b), 36 DCR 8117; Aug. 1, 1996, D.C. Law 11-152, § 301(g), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1542.

Emergency legislation. — For temporary repeal of §§ 31-1542 through 31-1548 1981 Ed., see § 301(g) through (m) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(g)-(m) of the Fiscal Year 1996 Bud-

get Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

§ 38-1205.03. Establishment of Board of Governors and School of Law. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 503, as added Feb. 24, 1987, D.C. Law

6-177, § 2(a), 33 DCR 7241; Sept. 12, 1987, D.C. Law 7-22, § 2, 34 DCR 4199; Dec. 10, 1987, D.C. Law 7-51, § 2, 34 DCR 6889; Apr. 30, 1988, D.C. Law 7-104, § 22(a), (b), 35 DCR 147; Mar. 15, 1990, D.C. Law 8-74, § 2(c), 36 DCR 8117; Aug. 1, 1996, D.C. Law 11-152, § 301(h), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1543.

Emergency legislation. — For temporary repeal of §§ 31-1542 through 31-1548 1981 Ed., see § 301(g) through (m) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(g)-(m) of the Fiscal Year 1996 Bud-

get Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1251.03.

§ 38-1205.04. Board of Governors Nominating Committee. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 504, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Oct. 7, 1987, D.C. Law 7-31, § 6, 34 DCR 3789; Apr. 30, 1988, D.C. Law 7-104, § 22(c), 35 DCR 147; Mar. 15, 1990, D.C. Law 8-74, § 2(d), 36 DCR 8117; Aug. 1, 1996, D.C. Law 11-152, § 301(i), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1544.

Emergency legislation. — For temporary repeal of §§ 31-1542 through 31-1548 [1981 Ed.], see § 301(g) through (m) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(g)-(m) of the Fiscal Year 1996 Bud-

get Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

§ 38-1205.05. Suspension, removal, and termination of Governors. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 505, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 2(e), 36 DCR 8117; Aug. 1, 1996, D.C. Law 11-152, § 301(j), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1545.

Emergency legislation. — For temporary repeal of §§ 31-1542 through 31-1548 [1981 Ed.], see § 301(g) through (m) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(g)-(m) of the Fiscal Year 1996 Bud-

get Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

§ 38-1205.06. Duties and limitations of the Board of Governors. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 506, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 2(f), 36 DCR 8117; Aug. 1, 1996, D.C. Law 11-152, § 301(k), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1546.

Emergency legislation. — For temporary repeal of §§ 31-1542 through 31-1548 1981 Ed., see § 301(g) through (m) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(g)-(m) of the Fiscal Year 1996 Bud-

get Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

§ 38-1205.07. Retirement. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 507, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 301(l), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1547.

Emergency legislation. — For temporary repeal of §§ 31-1542 through 31-1548 1981 Ed., see § 301(g) through (m) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(g)-(m) of the Fiscal Year 1996 Bud-

get Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

§ 38-1205.08. Employment rights. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 508, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 301(m), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1548.

Emergency legislation. — For temporary repeal of §§ 31-1542 through 31-1548 1981 Ed., see § 301(g) through (m) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(g)-(m) of the Fiscal Year 1996 Bud-

get Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

§ 38-1205.09. Review of records.

The District of Columbia Auditor shall, upon request, be provided access to all books, accounts, records, reports, findings and all other papers, things, or

property belonging to, or in use by, the School of Law, in accordance with the provisions of § 1-204.55.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 509, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241.)

Prior Codifications. — 1981 Ed., § 31-1549. legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 38-1205.01.

Legislative history of Law 6-177. — For

§ 38-1205.10. Preferential tuition for District of Columbia residents.

(a) The Board of Trustees shall, in accordance with § 38-1205.06(c)(7) [repealed], fix tuition to allow bona fide residents of the District of Columbia to attend the School of Law on a preferential tuition basis.

(b) An applicant for preferential tuition shall make a showing of the applicant's bona fide residence in the District of Columbia. Any applicant for the preferential tuition established under subsection (a) of this section shall be presumed to be a bona fide resident of the District of Columbia if the applicant has been, for 2 continuous years prior to the date of the applicant's enrollment in the School of Law:

(1) Domiciled in the District of Columbia and paid District of Columbia income taxes; or

(2) Enrolled in a college or university located outside the District of Columbia and been claimed as a dependent on District of Columbia resident tax returns filed by a parent or spouse of the applicant.

(c) Any applicant for the preferential tuition established under subsection (a) of this section who is not presumed to be a bona fide resident of the District of Columbia shall be required to establish by a preponderance of the evidence to the Board of Trustees or its designee that the applicant:

(1) Was a bona fide resident of the District of Columbia for a reasonable duration of time prior to the applicant's request for preferential tuition; and

(2) Remains a bona fide resident of the District of Columbia.

(d) In determining whether an applicant for preferential tuition under subsection (c) of this section is in fact a bona fide resident of the District of Columbia, the following factors shall be taken into consideration:

(1) Whether the applicant has maintained a year-round home in the District of Columbia, as evidenced by lease or mortgage agreements;

(2) Where the applicant's driver's license, if any, was issued;

(3) Where the applicant's motor vehicle, if any, is registered;

(4) Where the applicant is registered to vote;

(5) What address the applicant has used over the past several years for purposes of filing federal income tax returns, if any;

(6) Whether the applicant is a graduate of a public or private District of Columbia high school; and

(7) Any other factor deemed appropriate by the Board of Trustees.

(e) Any applicant denied preferential tuition shall be permitted to appeal

the denial by whatever procedures and to whatever officer of the School of Law as the Board of Trustees shall establish for final determination.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 510, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 2(g), 36 DCR 8117; Aug. 1, 1996, D.C. Law 11-152, § 301(n), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1550.

Emergency legislation. — For temporary repeal of section, see § 301(n) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412).

Section 303 of D.C. Act 11-264 provided for the application of § 301(n) of the act.

For temporary amendment of section, see § 201(n) of the Fiscal Year 1996 Budget Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Section 501 of D.C. Act 11-335 provided for application of the act.

Legislative history of Law 6-177. — For legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 38-1205.01.

Legislative history of Law 8-74. — For legislative history of D.C. Law 8-74, see Historical and Statutory Notes following § 38-1205.01.

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

References in text. — Section 38-1205.06, referred to in subsection (a), was repealed August 1, 1996, by D.C. Law 11-152.

§ 38-1205.11. Mayoral stipends.

The Mayor shall make available tuition stipends for students of the School of Law who are bona fide residents of the District of Columbia and who agree to employment by the District of Columbia government, or by any public service organization or institution designated by the Mayor, for a period of time immediately following the students' graduation from the School of Law. The length of service required shall be established by the terms of the stipends. Any stipend recipient who fails to perform the post-graduation work requirement shall be held liable to the District of Columbia for 3 times the amount of stipend funds provided to the recipient.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 511, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241.)

Prior Codifications. — 1981 Ed., § 31-1551.

Legislative history of Law 6-177. — For

legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 38-1205.01.

§ 38-1205.12. Full faith and credit of the District of Columbia not pledged.

The full faith and credit of the District of Columbia is not pledged for the payment of any principal of or interest on any obligation maintained or entered into by the Antioch School of Law, directly or indirectly, in whole or in part. The District of Columbia is not responsible or liable for payment of any principal of or interest on any obligation entered into by the Antioch School of Law, directly or indirectly, in whole or part.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 512, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241.)

Prior Codifications. — 1981 Ed., § 31-1552. legislative history of D.C. Law 6-177, see Historical and Statutory Notes following § 38-1205.01.

Legislative history of Law 6-177. — For

§ 38-1205.13. Merger. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title V, § 513, as added Feb. 24, 1987, D.C. Law 6-177, § 2(a), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 2(h), 36 DCR 8117; Aug. 1, 1996, D.C. Law 11-152, § 301(o), 43 DCR 2978.)

Prior Codifications. — 1981 Ed., § 31-1553. Support Congressional Review Emergency Act of 1996 (D.C. Act 11-335, August 1, 1996, 43 DCR 4256).

Emergency legislation. — For temporary repeal of section, see § 301(o) of the Fiscal Year 1996 Budget Support Emergency Act of 1996 (D.C. Act 11-264, April 26, 1996, 43 DCR 2412), and § 201(o) of the Fiscal Year 1996 Budget

Legislative history of Law 11-152. — For legislative history of D.C. Law 11-152, see Historical and Statutory Notes following § 38-1201.03.

Subchapter VI. Establishment of District of Columbia School of Law Within the University of the District of Columbia.

§ 38-1206.01. Establishment. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title VI, § 601, as added Feb. 24, 1987, D.C. Law 6-177, § 2(b), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 3(a), 36 DCR 8117.)

Prior Codifications. — 1981 Ed., § 31-1561. legislative history of D.C. Law 8-74, see Historical and Statutory Notes following § 38-1205.01.

Legislative history of Law 8-74. — For

§ 38-1206.02. Powers of Trustees. [Repealed].

Repealed.

(Oct. 26, 1974, Pub. L. 93-471, title VI, § 602, as added Feb. 24, 1987, D.C. Law 6-177, § 2(b), 33 DCR 7241; Mar. 15, 1990, D.C. Law 8-74, § 3(a), 36 DCR 8117.)

Prior Codifications. — 1981 Ed., § 31-1562. legislative history of D.C. Law 8-74, see Historical and Statutory Notes following § 38-1205.01.

Legislative history of Law 8-74. — For

Subchapter VII. Provision of Tuition Grants.

§ 38-1207.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Eligible caretaker relative” means an individual as defined in § 4-205.15(2)(B), who has primary responsibility for the care of a dependent child.

(2) "Eligible legal guardian" means any individual:

(A) Appointed as a testamentary or appointive guardian pursuant to Chapter 1 of Title 21; and

(B) Necessary for the maintenance of a household as provided in § 4-205.15(2)(D).

(3) "Eligible parent" means a child's natural or adoptive parent in a family eligible for Temporary Assistance for Needy Families or Program on Work, Employment, and Responsibility pursuant to Chapter 2 of Title 4.

(4) "Tuition grant" means a sum equal to the basic instructional charge for a full- or part-time program at the University and includes all required fees.

(5) "State" means any state of the United States, the District of Columbia, or any territory or possession of the United States.

(Oct. 26, 1974, Pub. L. 93-471, title VII, § 701, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946; Apr. 20, 1999, D.C. Law 12-241, § 14, 46 DCR 905.)

Prior Codifications. — 1981 Ed., § 31-1571.

Temporary Amendment of Section. — Section 14 of D.C. Law 12-230 substituted "Temporary Assistance for Needy Families or Program on Work, Employment, and Responsibility pursuant to Chapter 2 of Title 3" [Chapter 2 of Title 4, 2001 Ed.] for "the Aid to Families with Dependent Children category of public assistance as defined in § 3-201.1(1) § 4-01.01, 2001" in (3).

Section 18(b) of D.C. Law 12-230 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 14 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 14 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 14 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 45 DCR 521), and § 15 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. 13-19, February 17, 1999, 46 DCR 4292).

Legislative history of Law 7-74. — Law 7-74, "Tuition Grant for Parents, Caretaker Relatives, and Legal Guardians Eligible for AFDC Benefits Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-58, which was referred to the Committee on

Education and Libraries. The Bill was adopted on first and second readings on October 27, 1987, and November 10, 1987, respectively. Signed by the Mayor on November 24, 1987, it was assigned Act No. 7-108 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-230. — Law 12-230, the "Self-Sufficiency Promotion Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-557. The Bill was adopted on first and second readings on May 5, 1998, and July 30, 1998, respectively. Signed by the Mayor on August 18, 1998, it was assigned Act No. 12-443 and transmitted to both Houses of Congress for its review. D.C. Law 12-230 became effective on April 20, 1999.

Legislative history of Law 12-241. — Law 12-241, the "Self-Sufficiency Promotion Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-558, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-573 and transmitted to both Houses of Congress for its review. D.C. Law 12-241 became effective on April 20, 1999.

Mayor's Orders. — Establishment of the D.C. Tuition Assistance Grant Program Office and Delegation of Authority under Public Law 106-98, the "District of Columbia College Access Act of 1999," see Mayor's Order 2000-138, September 7, 2000 (47 DCR 8247).

§ 38-1207.02. Criteria for tuition grant eligibility.

Subject to the limitations provided in §§ 38-1207.03 and 38-1207.05, the University shall admit an eligible parent, a caretaker relative, or a legal guardian, who shall have been certified as eligible by the District of Columbia

Department of Human Services, to any scheduled course and shall provide a tuition grant that shall be used exclusively to offset against the charge for tuition and required fees for the eligible student taking 1 or more courses, whether or not taken for credit toward a degree, when the course or courses are being given, when space is available, and when the conditions for enrollment in the course are met.

(Oct. 26, 1974, Pub. L. 93-471, title VII, § 702, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Section references. — This section is referred to in § 38-1207.03.

Prior Codifications. — 1981 Ed., § 31-1572.

Legislative history of Law 7-74. — For legislative history of D.C. Law 7-74, see Historical and Statutory Notes following § 38-1207.01.

§ 38-1207.03. Conditions of enrollment.

All pertinent University rules and regulations, including, but not limited to, those relating to admission standards, shall apply to applicants for admission and to students already enrolled who are eligible for the tuition grant program outlined in § 38-1207.02.

(Oct. 26, 1974, Pub. L. 93-471, title VII, § 703, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Section references. — This section is referred to in § 38-1207.02.

Prior Codifications. — 1981 Ed., § 31-1573.

Legislative history of Law 7-74. — For legislative history of D.C. Law 7-74, see Historical and Statutory Notes following § 38-1207.01.

§ 38-1207.04. Report on grant program participation.

At the termination of each semester, the Trustees of the University shall furnish to the Council of the District of Columbia a statement of:

- (1) The number of persons who, during that semester, received tuition grants and participated in one or more courses pursuant to the provisions of this subchapter;
- (2) The total number of course enrollments attributable to these persons;
- (3) The number of individuals included in the response to paragraph (1) of this section who successfully completed each course, who dropped out, or who otherwise did not complete a course in which the individual had enrolled; and
- (4) The total amount of funds granted for the semester pursuant to this program to offset charges for tuition and required fees.

(Oct. 26, 1974, Pub. L. 93-471, title VII, § 704, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Prior Codifications. — 1981 Ed., § 31-1574.

Legislative history of Law 7-74. — For

legislative history of D.C. Law 7-74, see Historical and Statutory Notes following § 38-1207.01.

§ 38-1207.05. **Limitation on grants.**

No tuition grant pursuant to this subchapter shall be offered or approved for any student who has previously been the recipient of a tuition grant but has failed to remain in good academic standing by reason of neglect of the student's academic work.

(Oct. 26, 1974, Pub. L. 93-471, title VII, § 705, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Section references. — This section is referred to in § 38-1207.02.

Prior Codifications. — 1981 Ed., § 31-1575.

Legislative history of Law 7-74. — For legislative history of D.C. Law 7-74, see Historical and Statutory Notes following § 38-1207.01.

§ 38-1207.06. **Additional educational opportunities.**

This subchapter shall not be construed to prohibit the University from offering eligible parents, caretaker relatives, or legal guardians eligible pursuant to this subchapter additional financial assistance, additional educational opportunities free of charge or at reduced charge, or other assistance supplemental to or in addition to the minimum requirements specified by this subchapter.

(Oct. 26, 1974, Pub. L. 93-471, title VII, § 706, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Prior Codifications. — 1981 Ed., § 31-1576.

Legislative history of Law 7-74. — For

legislative history of D.C. Law 7-74, see Historical and Statutory Notes following § 38-1207.01.

§ 38-1207.07. **Budget account.**

The Trustees shall set aside funds in an appropriate budget account or accounts to provide for the grants authorized in this subchapter. In providing funds for a tuition grant pursuant to this subchapter, the Trustees shall first ensure that the University or the student has applied for any federal educational grant funds available to the University or to the student for this purpose, and the Trustees shall use District of Columbia appropriated funds or other University funds only for that part of the tuition grant that exceeds the amount of federal educational grant funds available. In the case of a student who meets all eligibility requirements for direct federal educational grant funds and has made timely application for these grant funds but the funds have not been received by either the University or the student, the University shall credit the student's account in an amount not less than the federal educational grant funds for which the student is eligible and not more than the student's tuition and fees. Upon receipt of federal grant funds by the University, the University shall apply the funds received to the student's account; or, upon receipt of federal grant funds by the student, the student shall immediately repay to the University the amount credited by the University.

(Oct. 26, 1974, Pub. L. 93-471, title VII, § 707, as added Feb. 18, 1988, D.C. Law 7-74, § 2, 34 DCR 7946.)

Prior Codifications. — 1981 Ed., § 31-1577.

Emergency legislation. — For temporary (90 day) addition of §§ 38-1208.01 to 38-1208.06, see § 2102 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 7-74. — For legislative history of D.C. Law 7-74, see Historical and Statutory Notes following § 38-1207.01.

Subchapter VIII. Office of Vocational Education and Skills Training.

§ 38-1208.01. Definitions.

For the purposes of this subchapter, the term:

- (1) "Advisory Board" means the Advisory Board of Vocational Education and Skills Training as defined in § 38-1208.03.
- (2) "DCPS" means the District of Columbia Public Schools.
- (3) "UDC" means the University of the District of Columbia.
- (4) "VEST" means the Office of Vocational Education and Skills Training.

(Oct. 26, 1974, Pub. L. 93-471, Title VIII, § 801, as added Oct. 1, 2002, D.C. Law 14-190, § 2202, 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 70, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(d), 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-105, in par. (1), validated a previously made technical correction.

D.C. Law 15-354 validated a previously made technical correction.

Legislative history of Law 14-190. — Law 14-190, the "Fiscal Year 2003 Budget Support Act of 2002", was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 38-302.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

§ 38-1208.02. Establishment of the Office of Vocational Education and Skills Training at the University of the District of Columbia.

(a) Pursuant to § 1-204.04(b), the Council establishes an Office of Vocational Education and Skills Training under the President of the University of the District of Columbia.

(b) VEST shall be responsible for the oversight and coordination of all government-sponsored vocational education, adult apprenticeship, and workforce skills training performed by UDC and DCPS.

(Oct. 26, 1974, Pub. L. 93-471, title VIII, § 802, as added Oct. 1, 2002, D.C. Law 14-190, § 2202, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

§ 38-1208.03. Establishment of Advisory Board.

(a) There is established an Advisory Board on Vocational Education and Skills Training comprised of the following:

(1) President of UDC, or a representative thereof, who shall serve as Chairperson of the Advisory Board;

(2) Chairperson of the Apprenticeship Council, or a representative thereof;

(3) Chairperson of the Board of Education, or a representative thereof;

(4) Chairperson of the Council Committee on Education, Libraries, and Recreation, or a representative thereof;

(5) Chairperson of the Council Committee on Public Services, or of that Council committee with purview over the Department of Employment Services, or a representative thereof;

(6) Director of the Department of Employment Services, or a representative thereof;

(7) Chairperson of the Youth Investment Committee of the District of Columbia Workforce Investment Board, or a representative thereof;

(8) Mayor, or a representative thereof; and

(9) Superintendent of DCPS, or a representative thereof.

(b) The Advisory Board shall submit to the Council and to the Mayor a short-term plan as described in § 38-1208.04.

(Oct. 26, 1974, Pub. L. 93-471, title VIII, § 803, as added Oct. 1, 2002, D.C. Law 14-190, § 2202, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

§ 38-1208.04. Requirements of short-term plan.

(a) The short-term VEST plan shall include:

(1) A mission statement defining the goals and purposes of VEST;

(2) A description of existing vocational education and adult apprenticeship courses offered by DCPS and UDC and in the District of Columbia;

(3) A list of the services and programs to be provided by VEST;

(4) A list of performance standards by which the success of VEST shall be measured;

(5) The identification of all local, federal, private, and other resources, such as personnel, available to support VEST services and programs, including those found within the Department of Employment Services, the Apprenticeship Council, UDC, DCPS, the District of Columbia Workforce Investment Board, and other District of Columbia government agencies;

(6) Use of identified resources to support VEST;

(7) Suggestions for the establishment of Individual Training Accounts for DCPS graduates of vocational educational programs;

(8) A strategy for recruiting individuals into the vocational education programs and adult apprenticeship programs offered by VEST;

(9) A plan for the placement of graduates of UDC apprenticeship training programs and vocational education programs, including resources dedicated for the plan;

(10) Specific recommendations for legislative action by the Council to assist VEST; and

(11) Other provisions deemed appropriate by the Advisory Board and consistent with the purposes of this subchapter.

(b) The short-term VEST plan shall be presented to the Council within 120 calendar days following October 1, 2002, for a 30-day period of review excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 30-day review period, the proposed rules shall be deemed approved.

(Oct. 26, 1974, Pub. L. 93-471, title VIII, § 804, as added Oct. 1, 2002, D.C. Law 14-190, § 2202, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

§ 38-1208.05. Executive Director.

(a) VEST shall be directed by an Executive Director who shall be appointed by the President of UDC, with the advice and consent of the Board of Trustees of UDC.

(b) The Executive Director shall employ staff as needed, in accordance with annual appropriations.

(Oct. 26, 1974, Pub. L. 93-471, title VIII, § 805, as added Oct. 1, 2002, D.C. Law 14-190, § 2202, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

§ 38-1208.06. Funding.

There is authorized to be appropriated from the general revenues of the District of Columbia funds necessary to carry out the purposes of this subchapter.

(Oct. 26, 1974, Pub. L. 93-471, title VIII, § 806, as added Oct. 1, 2002, D.C. Law 14-190, § 2202, 49 DCR 6968.)

Unit B. Audits.

§ 38-1231.01. Biennial audits of UDC Endowment Fund.

Beginning February 1, 2001, the District of Columbia Auditor shall conduct biennial audits of the University of the District of Columbia's Endowment

Fund ("Fund"). The Auditor shall provide the Council with a report on the status of the Fund not later than February 1 of each year of the biennial audit.

(Oct. 19, 2000, D.C. Law 13-172, § 2407, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) authorization of biennial audits of endowment fund, see § 2407 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2407 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — Law

13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Unit C. UDC Capital Budget Authority and Funding Transfer.

§ 38-1241.01. Transfer of capital budget authority and funding to the University of the District of Columbia.

Beginning October 1, 2009, all University of the District of Columbia ("UDC") capital projects shall be the responsibility of UDC to implement. The budget authority and any unexpended balances of appropriations, allocations, income, and other funds for all UDC capital projects shall be transferred from the Department of Real Estate Services (formerly, the Office of Property Management) to UDC upon October 15, 2009.

(Mar. 3, 2010, D.C. Law 18-111, § 4141, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 4141 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 4141 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law 18-111, the "Fiscal Year 2010 Budget Support Act of 2009", was introduced in Council and assigned Bill No. 18-203, which was referred to

the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 4140 of D.C. Law 18-111 provided that subtitle O of title IV of the act may be cited as the "Transfer of Capital Budget Authority and Funding to the University of the District of Columbia Act of 2009".

CHAPTER 12A. COMMUNITY COLLEGE OF THE DISTRICT OF COLUMBIA
PLAN FOR INDEPENDENCE.

Sec.

38-1271.01. University of the District of Columbia Community College Transition to Independence Advisory Board.

Sec.

38-1271.02. Transition plan for independent Community College of the District of Columbia.

38-1271.03. Funding for transition plan.

§ 38-1271.01. University of the District of Columbia Community College Transition to Independence Advisory Board.

There is established a 5-member University of the District of Columbia Community College Transition to Independence Advisory Board. Two of the advisory board members shall be nominated by the Chairman of the Council and 3 advisory board members shall be nominated by the Mayor. All advisory board members shall be subject to confirmation by the Council.

(Sept. 14, 2011, D.C. Law 19-21, § 4702, 58 DCR 6226.)

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was

assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 4071 of D.C. Law 19-21 provided that subtitle H of title IV of the act may be cited as “Community College of the District of Columbia Plan for Independence Act of 2011”.

§ 38-1271.02. Transition plan for independent Community College of the District of Columbia.

(a) The President and Chairman of the Board of Trustees of the University of the District of Columbia (“UDC”), the President of the Community College of the District of Columbia (“CCDC”), and the University of the District of Columbia Community College Transition to Independence Advisory Board, shall jointly develop and submit to the Council by no later than November 28, 2011, a transition plan for establishing CCDC as an independent community college.

(b) The transition plan shall:

(1) Identify all actions that must be taken for CCDC to operate independently from the UDC flagship university, including the creation of an independent board of trustees for CCDC;

(2) Account for the type and scope of programs offered and envisioned, and include the development, expansion, integration, coordination, and efficient use of the facilities; and

(3) Include the following:

(A) An independent budget for CCDC that shall identify, for the first 5 years of operation as an independent entity, beginning in fiscal year 2013, the expected costs and revenues associated with its operation;

(B) The CCDC's application for accreditation by the Middle States Commission on Higher Education;

(C) The Draft Terms of Articulation, which shall contain all proposed policies related to the transfer of credits and admission policies between CCDC and UDC, and which may be updated from time to time;

(D) A Workforce and Local Education Plan, which shall identify potential arrangements to provide training for both public and private sector employees, and which shall identify mechanisms by which to increase cooperation and interaction with the District of Columbia Public Schools, public charter schools, and other District agencies; and

(E) A plan detailing any transfers of positions, employees, property, and funds from UDC to CCDC for the purposes of establishing an independent community college.

(Sept. 14, 2011, D.C. Law 19-21, § 4703, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-1271.01.

§ 38-1271.03. Funding for transition plan.

Funding to support the development of the transition plan for an independent community college shall consist of \$500,000, as set forth in the fiscal year 2012 budget and financial plan, to be transferred to an account held by the UDC Trustees and to be exclusively used for the purpose of developing the transition plan as described in this chapter.

(Sept. 14, 2011, D.C. Law 19-21, § 4704, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-1271.01.

CHAPTER 13. EDUCATION LICENSURE COMMISSION.

Sec.	Sec.
38-1301. Purpose.	38-1308. Supplemental funding.
38-1302. Definitions.	38-1309. Postsecondary educational institution; requirements.
38-1303. Education Licensure Commission — Established.	38-1310. Exempt institutions.
38-1304. Same — Composition; terms; vacancies; meetings; compensation.	38-1311. Bond or surety requirement; Mayor to issue rules.
38-1305. Same — Transfer of positions; personnel; establishment of panels.	38-1312. Violations; penalties.
38-1306. Same — Regulations; review of licensed institutions; validity of current licenses.	38-1313. Transfer of the Education Licensure Commission from the Department of Consumer and Regulatory Affairs to the State Education Office.
38-1307. Same — Functions.	

§ 38-1301. Purpose.

The purpose of this chapter is to provide for the protection, education, and welfare of the citizens of the District of Columbia and its students, by:

(1) Establishing minimum standards concerning the quality of postsecondary education, ethical and business practices, health and safety, and fiscal responsibility, to protect against substandard, transient, unethical, deceptive, or fraudulent postsecondary educational institutions and practices;

(2) Prohibiting the granting of false or misleading postsecondary educational credentials;

(3) Prohibiting misleading literature, advertising, solicitation, or representation by postsecondary educational institutions or their agents;

(4) Providing for the preservation of essential academic records;

(5) Providing for a commission to advise the Mayor and Council of the District of Columbia as to the postsecondary educational needs of the District of Columbia; and

(6) Providing for a commission to serve as the state approving agency for veterans benefits.

(Apr. 6, 1977, D.C. Law 1-104, title I, § 101, 23 DCR 8734; Mar. 16, 1989, D.C. Law 7-217, § 2(a), 36 DCR 523.)

Prior Codifications. — 1981 Ed., § 31-1601.

1973 Ed., § 31-2001.

Legislative history of Law 1-104. — Law 1-104 was introduced in Council and assigned Bill No. 1-293, which was referred to the Committee on Higher Education/University of the District of Columbia. The Bill was adopted on first and second readings on September 15, 1976, and October 12, 1976, respectively. Enacted without signature by the Mayor on November 18, 1976, it was assigned Act No. 1-177 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-217. — For legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

Mayor's Orders. — Appropriations authorized: Public Law 102-111, 105 Stat. 563, the District of Columbia Appropriations Act, 1992, provided \$477,000 for the Education Licensure Commission. Establishment of District of Columbia Advisory Committee on Education: See Mayor's Order 89-256, November 7, 1989.

CASE NOTES

ANALYSIS

Constitutional rights of colleges and universities.
 Constitutional rights of foreign degree-granting institutions.
 Construction with other laws.
 Nonlicensure powers and duties.
 Police powers.
 Purposes.
 Regulation of foreign degree-granting institutions.
 Validity.

Constitutional rights of colleges and universities.

The First Amendment cannot be used as a shield to protect substandard or fraudulent degree-conferring educational institutions, and the District of Columbia can insist that schools operating degree programs in the District provide the minimal resources and education appropriate to the degree conferred. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Schools are not shielded by the First Amendment from governmental regulation of business conduct deemed detrimental to the public merely because they are engaged in First Amendment activities. U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Educational institutions, as well as individuals, have a First Amendment right to teach and to academic freedom. U.S.C. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Not every limit on institutional autonomy also implicates academic freedom. U.S.C. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

However valid the government's interest is in regulating a degree-granting educational institution, it generally cannot be pursued by discriminating between particular view points and information. U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Educational institutions have no inherent or constitutional right to confer degrees; rather, degree conferral is business conduct, a corporate privilege conferred by the state of incorporation. *Nova University v. Educational Institu-*

tion Licensure Com'n, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Constitutional rights of foreign degree-granting institutions.

Although private educational institution had power to confer degrees from state of Florida, the institution, as a foreign corporation, had no constitutional right to operate its degree program in the District of Columbia and the District could impose the same restrictions upon the institution as it imposed upon its own degree-conferring schools. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

District of Columbia cannot place conditions on receipt by private educational institutions of degree conferral and operation of degree programs privileges if the conditions violate the Constitution or require the recipient to forego the exercise of fundamental rights, as the District cannot regulate its businesses in ways that impinge on fundamental rights. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Construction with other laws.

The authority of the Educational Institution Licensure Commission to appoint, and hence to promote, its personnel did not survive the passage of the Comprehensive Merit Personnel Act; under the Act, the mayor is the personnel authority for the Commission. D.C. Code 1981, §§ 1-601.1(3), 1-601.2(a)(2), 1-602.1, 1-603.1(14), 1-604.6(a, b), 1-633.5(b), 31-1601 et seq., 31-1605(b). *Sims v. District of Columbia*, 531 A.2d 648, 1987 D.C. App. LEXIS 443 (1987).

Nonlicensure powers and duties.

Educational Institution Licensure Commission's enabling statute gave that agency authority to grant and revoke licenses of institutions but not to adjudicate contract disputes for money damages between private individual and educational institution licensed by agency, and thus student's action for money damages for breach of contract against law school for failure to provide programs and services listed in school's catalogue and student handbook was not subject to doctrines of exhaustion of administrative remedy and primary jurisdiction, on theory that he should have sought relief from the Commission. D.C. Code 1981, §§ 31-1601 et seq., 31-1603, 31-1605, 31-1607. *Goode v. Antioch University*, 544 A.2d 704, 1988 D.C. App. LEXIS 102 (1988).

Police powers.

State has substantial interest and broad dis-

cretion in regulating its schools and quality of education provided to its citizens. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Purposes.

Motivation in enacting statute requiring that private educational institutions incorporated outside of the District of Columbia and undertaking to confer a degree or to operate in the District of Columbia must first obtain a license from the Educational Institution Licensure Commission was not hostility to particular ideas, opinions, or educational philosophy, or a concern with harms that might occur from public exposure to particular information; sole interest of Congress was to ensure that degree-conferring institutions incorporated or operating in the District meet minimal academic standards and to protect the public against harms arising from misuse of degree-conferring powers which arose independently of any message or teaching that might precede degree conferral. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Regulation of foreign degree-granting institutions.

Educational Institution Licensure Commission's denial of a license to a Florida private educational institution which sought to operate its doctorate of public administration program in the District of Columbia, on grounds that the institution did not meet requirements for adequate full-time faculty and library resources, was based on substantial evidence and was reasonable and consistent with language and purpose of statute requiring that private educational institutions seeking to operate in the District first received a license from the Commission. D.C. Code 1981, § 29-815. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Statutory standards for licensure of a private educational institution seeking to operate in the District of Columbia concerning number of faculty and type of library the institution is required to provide were sufficiently clear and did not violate the First Amendment on ground that they were impermissibly vague as applied to private educational institution incorporated in Florida and seeking to operate in the District of Columbia. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1, 5, 14. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Regulations and statute providing standards for licensure of a private educational institution seeking to operate in the District of Columbia provided sufficient standards for enforcement and did not permit ad hoc and discriminatory action by the Educational Institution Licensure Commission on invidious and irrelevant grounds, for purposes of challenge that the regulations were impermissibly vague, even though the regulations contained such terms as "adequate," "sufficient" and "reasonable." D.C. Code 1981, § 29-815. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Statute requiring that any educational institution incorporated outside of the District of Columbia undertaking to confer any degree or operating in the District of Columbia obtain a license from the Educational Institution Licensure Commission requires degree conferring institutions incorporated outside the District to obtain a license to operate in the District without regard to where the degree is conferred. D.C. Code 1981, § 29-815. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Validity.

Statute requiring private educational institutions incorporated outside of the District of Columbia and undertaking to confer degrees to obtain a license as a condition to "operating" in the District did not violate the First Amendment on its face or as applied to an educational institution, incorporated in Florida and authorized to issue degrees in Florida, which sought to "teach" its doctorate of public administration program in the District of Columbia and then confer degrees in Florida. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Fact that the Educational Institution Licensure Commission may inquire into faculty qualifications, library resources, and curriculum content of a private educational institution seeking to operate in the District of Columbia does not make statute allowing such inquiry content related or a constraint on academic freedom, since the inquiry is limited to neutral, sound, academic criteria, not intended or likely to intrude upon legitimate intellectual life of a university, but to insure that a university conferring a degree does have an intellectual life and minimum resources essential to support that life. D.C. Code 1981, § 29-815; U.S.C. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

§ 38-1302. Definitions.

For the purposes of this chapter:

(1) "Agent" means any person owning any interest in, employed by, or representing for remuneration, an educational institution, whether such institution is located within or outside the District, and who solicits or offers to enroll in the District students or enrollees for such institution, or who holds himself or herself out to residents of the District of Columbia as representing an educational institution for any such purpose.

(1a) "Accredited" means approved by an accrediting association recognized by the United States Department of Education.

(2) "District" means the District of Columbia.

(3) "Person" includes, but is not limited to, any individual, group of individuals, firm, partnership, corporation, association, company, society, trust, or any other entity whatsoever.

(4) "Educational institution" means:

(A) Any entity or person organized or chartered in the District that operates, keeps, or maintains any facility in the District through which educational instruction is offered;

(B) Any branch, extension, or facility of an entity that operates, keeps, or maintains any facility in the District through which educational instruction is offered, but organized or chartered outside of the District, that furnishes or offers to furnish in the District instruction or educational services leading toward a postsecondary degree, diploma, or certificate; or

(C) An entity that is organized or chartered and that operates outside of the District of Columbia, but through agents offers instruction or educational services to residents of the District.

(4a) "Certificate" or "diploma" means a document, designation, mark, appellation, series of letters or words, academic or honorary title, or other symbol that signifies, purports or is generally taken to signify satisfactory completion of the requirements of an academic, educational, vocational or professional program of study at the postsecondary level, but does not include completion of a program for a degree.

(5) "Degree" means a document, designation, mark, appellation, series of letters or words, academic or honorary titles, or other symbol that signifies, purports or is generally taken to signify satisfactory completion of the requirements of an academic, educational, or professional program of study for the associate, bachelor, master or doctor level of college or university education.

(6) "To grant or to confer" includes awarding, selling, conferring, bestowing, or giving.

(7) "Education", "educational service", or a like term means a class, course, or program of instruction or study at the postsecondary level in whatever form, manner, or medium provided, whether by personal attendance or correspondence.

(8) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(9) "Chairman of the Council" means Chairman of the Council of the District of Columbia.

(10) "Commission" means Education Licensure Commission.

(11) "To operate" or "operating" when applied to an educational institution means to establish, keep, or maintain any facility or location in the District, or to establish, keep, or maintain any facility or location organized or chartered in the District wherefrom or through which education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to perform any such act.

(12) "License" or "to license" means the granting of approval to operate by the Commission to any educational institution covered under this chapter. Such approval shall be contingent upon said educational institution's compliance with all rules, regulations and criteria promulgated by the Commission, as well as compliance with all other applicable D.C. laws and regulations.

(12A) "Non-profit" means an organization or institution that is exempt from federal income tax under the provisions of 26 U.S.C. § 501(c)(3) and that meets the requirements of Chapter 4 of Title 29.

(12B) "Postsecondary" means the level of education beyond high school.

(13) "Proprietary school" means any privately-owned educational institution operated for a profit.

(14) "Facility" means a physical structure located in the District, including suitable housing, classrooms, laboratories, and library resources, as required by the nature of the program or the student body.

(Apr. 6, 1977, D.C. Law 1-104, title II, § 201, 23 DCR 8734; Mar. 16, 1989, D.C. Law 7-217, § 2(b), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(a), (b), 38 DCR 333; Aug. 16, 2008, D.C. Law 17-219, § 4010(a), 55 DCR 7598; July 2, 2011, D.C. Law 18-378, § 3(cc), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 31-1602.

1973 Ed., § 31-2002.

Effect of amendments. — D.C. Law 17-219 rewrote pars. (4)(A) and (B); and added par. (14).

D.C. Law 18-378, in par. (12A), substituted "Chapter 4 of Title 29" for "subchapter I of Chapter 3 of Title 29".

Legislative history of Law 1-104. — For legislative history of D.C. Law 1-104, see Historical and Statutory Notes following § 38-1301.

Legislative history of Law 7-217. — For legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

Legislative history of Law 8-239. — Law 8-239 was introduced in Council and assigned Bill No. 8-584, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-322 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 38-1202.08.

Short title. — Short title: Section 4009 of D.C. Law 17-219 provided that subtitle D of title IV of the act may be cited as the "Education Licensure Commission Amendment Act of 2008".

Editor's notes. — Licensing of proprietary schools: For amendment of proprietary school regulation related to the licensing of proprietary schools, see § 2 of the Proprietary School Regulations Amendment Act of 1982 (D.C. Law 4-134, 29 DCR 2748).

CASE NOTES

Educational institution.

Issue of whether District of Columbia Educational Licensure Commission could issue a license to foreign university that used the word "American" in its name became moot, in declaratory judgment action brought by private university seeking revocation of license of foreign university unless it dropped the word from its name, when the Council of the District

amended the District Code to require an educational institution to have a physical presence in the District in order to be eligible for licensure by the Commission, and foreign university was no longer eligible to obtain a license because it did not have a physical presence in the District. *District of Columbia v. Am. Univ.*, 2 A.3d 175, 2010 D.C. App. LEXIS 491 (2010).

§ 38-1303. Education Licensure Commission — Established.

There is established for the District of Columbia an Education Licensure Commission ("Commission") which shall license postsecondary educational institutions subject to this chapter and their agents, ensure authenticity and legitimacy of the educational institutions, serve as the state approving agency for veterans educational benefits, provide standards and criteria, and administer rules and regulations, including rules of procedure for the Commission to ensure adequate public notice of each meeting of the Commission.

(Apr. 6, 1977, D.C. Law 1-104, § 3, 23 DCR 8734; Mar. 16, 1989, D.C. Law 7-217, § 2(c), 36 DCR 523.)

Cross references. — Candidates for commission, disclosure of interests, see § 1-1106.02.

Licensing of institutions of learning to confer degrees, see § 29-615 et seq.

Prior Codifications. — 1981 Ed., § 31-1603.

1973 Ed., § 31-2003.

Legislative history of Law 1-104. — For legislative history of D.C. Law 1-104, see His-

torical and Statutory Notes following § 38-1301.

Legislative history of Law 7-217. — For legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

Mayor's Orders. — Realignment of functions within the Department of Consumer and Regulatory Affairs: See Mayor's Order 96-15, February 8, 1996 (43 DCR 1112).

CASE NOTES

In general.

Educational Institution Licensure Commission's enabling statute gave that agency authority to grant and revoke licenses of institutions but not to adjudicate contract disputes for money damages between private individual and educational institution licensed by agency, and thus student's action for money damages for breach of contract against law school for

failure to provide programs and services listed in school's catalogue and student handbook was not subject to doctrines of exhaustion of administrative remedy and primary jurisdiction, on theory that he should have sought relief from the Commission. *D.C. Code 1981, §§ 31-1601 et seq., 31-1603, 31-1605, 31-1607. Goode v. Antioch University*, 544 A.2d 704, 1988 D.C. App. LEXIS 102 (1988).

§ 38-1304. Same — Composition; terms; vacancies; meetings; compensation.

(a) The Commission shall consist of 5 members who shall be appointed by the Mayor.

(b) Each member of the Commission shall be a bona fide resident of the District of Columbia and shall serve for a term of 3 years, except that of the

members first appointed to the Commission, 3 members shall be appointed to serve for a term of 2 years and 2 members shall be appointed to serve for a term of 3 years, to be determined by lot. Members may not be appointed to serve for more than 2 consecutive terms. Any person appointed to fill a vacancy on the Commission shall be appointed to serve the remainder of the term in the same manner as the original selection. Persons appointed to fill the remainder of a term, where the remainder is less than one-half of the original term, may be reappointed to 2 full terms.

(c) Any member of the Commission who is or has been, within 12 months of appointment, an officer, employee, student, trustee, or member of the governing board of an educational institution operating in the District of Columbia that is subject to licensure by the Commission or has a financial interest in an educational institution subject to licensure shall not participate in any matter before the Commission concerning the institution.

(d) The Commission shall choose annually from among its members a Chairperson and such other officers as it deems necessary. All meetings of the Commission shall be called by the Chairperson or a majority of the members, except the 1st meeting of the Commission shall be called by the Mayor.

(e) Three members shall constitute a quorum of the Commission and no official action of the Commission shall be taken except in an open meeting of the Commission with a quorum present.

(f) Members of the Commission shall each be entitled to compensation pursuant to the provisions of § 1-611.08, up to a maximum of \$4,000 for any 1 year. While away from their homes or regular places of business in the performance of the duties of the Commission, members shall be allowed travel expenses, including per diem in lieu of substance.

(Apr. 6, 1977, D.C. Law 1-104, § 4, 23 DCR 8734; Mar. 3, 1979, D.C. Law 2-139, § 3205(y), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Mar. 16, 1989, D.C. Law 7-217, § 2(d), 36 DCR 523.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 31-1604.

1973 Ed., § 31-2004.

Legislative history of Law 1-104. — For legislative history of D.C. Law 1-104, see Historical and Statutory Notes following § 38-1301.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22,

1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — Law 3-81 was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980 and May 20, 1980, respectively. Signed by the Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-217. — For legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

§ 38-1305. Same — Transfer of positions; personnel; establishment of panels.

(a) There shall be transferred to the Commission such positions and their

funding that formerly were assigned to the Board of Higher Education for the approval and licensure of post-secondary institutions.

(b) Personnel shall be appointed and compensation fixed in accordance with the provisions of Chapter 6 of Title 1.

(c) The Commission may set up panels of persons qualified to inspect, evaluate and make recommendations concerning the approval for licensure of the several kinds of institutions covered by this chapter.

(Apr. 6, 1977, D.C. Law 1-104, § 5, 23 DCR 8734; Mar. 3, 1979, D.C. Law 2-139, § 3205(y), 25 DCR 5740; Mar. 16, 1989, D.C. Law 7-217, § 2(e), 36 DCR 523.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 31-1605.

1973 Ed., § 31-2005.

Legislative history of Law 1-104. — For legislative history of D.C. Law 1-104, see Historical and Statutory Notes following § 38-1301.

Legislative history of Law 2-139. — For legislative history of D.C. Law 2-139, see Historical and Statutory Notes following § 38-1304.

Legislative history of Law 7-217. — For legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

Editor's notes. — 2-139: See § 1-637.1.

CASE NOTES

ANALYSIS

Construction with other laws.
Powers and duties.

Construction with other laws.

The authority of the Educational Institution Licensure Commission to appoint, and hence to promote, its personnel did not survive the passage of the Comprehensive Merit Personnel Act; under the Act, the mayor is the personnel authority for the Commission. D.C. Code 1981, §§ 1-601.1(3), 1-601.2(a)(2), 1-602.1, 1-603.1(14), 1-604.6(a, b), 1-633.5(b), 31-1601 et seq., 31-1605(b). *Sims v. District of Columbia*, 531 A.2d 648, 1987 D.C. App. LEXIS 443 (1987).

Powers and duties.

Educational Institution Licensure Commis-

sion's enabling statute gave that agency authority to grant and revoke licenses of institutions but not to adjudicate contract disputes for money damages between private individual and educational institution licensed by agency, and thus student's action for money damages for breach of contract against law school for failure to provide programs and services listed in school's catalogue and student handbook was not subject to doctrines of exhaustion of administrative remedy and primary jurisdiction, on theory that he should have sought relief from the Commission. D.C. Code 1981, §§ 31-1601 et seq., 31-1603, 31-1605, 31-1607. *Goode v. Antioch University*, 544 A.2d 704, 1988 D.C. App. LEXIS 102 (1988).

§ 38-1306. Same — Regulations; review of licensed institutions; validity of current licenses.

(a) Reserved.

(b)(1) The Commission shall license degree granting institutions and institutions that give instruction that result in credit toward a degree as follows:

(A) A provisional license shall be awarded to every institution upon initial licensure, which shall be for such period as the Commission deems necessary before the institution is eligible for a permanent license. The award of the provisional license shall be based upon the Commission's determination that the institution complies, or can within a reasonable time comply with all requirements of this chapter, and shall be subject to conditions that the Commission deems necessary to achieve full compliance with this chapter.

(B) Once a provisional license has been awarded, the Commission shall award a permanent license, subject to periodic review in accordance with subsection (b) of this section, if the Commission determines that an accredited educational institution is in full compliance with the provisions of this chapter.

(2) In accordance with procedures consistent with subchapter I of Chapter 5 of Title 2, the Commission may suspend or revoke the license of an institution for failure to comply with the provisions of this chapter and regulations issued pursuant to this chapter may reduce a permanent license to a provisional license, and refuse to issue a license.

(3) The Mayor shall issue rules to implement the provisions of the chapter pursuant to subchapter I of Chapter 5 of Title 2 that shall include, but not be limited to, a schedule of licensing fees and charges and standards and requirements for licensure of degree granting and non-degree granting programs. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays and days of Council recess. If the Council does not approve or disapprove the proposed rules in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(4) To the extent consistent with this chapter, the Commission shall utilize the rules of the Board of Higher Education entitled "Regulations Relating to the Licensing of Institutions Which Confer Degrees," issued July 1, 1970, until the rules are amended or repealed.

(5) The Proprietary School Regulations, issued October 1, 1971 (Reg. 71-30; 16 DCMR 12), shall continue in effect until repealed or amended by rules adopted pursuant to paragraph (3) of this subsection.

(c)(1) The Commission may undertake the following:

(A) An independent evaluation of an educational institution's facilities and programs that are located in the District for purposes of initial licensure of an educational institution;

(B) A periodic review of any nonaccredited degree-granting licensee;

(C) A periodic review of any nondegree granting educational institution;
and

(D) A periodic review of any branch or extension of an accredited degree-granting licensee that is located outside of the District.

(2) The Commission may make an independent evaluation of an institution's facilities and programs outside the District for purposes of initial licensure of an institution that seeks to operate a branch or extension within the District and the periodic review of a licensee that is not accredited.

(3) The Commission's periodic review of facilities and programs of an accredited licensee shall, except as specified in paragraph (1) of this subsection, be made only by means of a Commission observer of an evaluation by a regional accrediting association, or, if the programs are limited to a specialty, by a specialized accrediting association.

(4) The Commission may make an on-site investigation as authorized by this subsection to conduct any evaluation authorized by this subsection and to investigate a complaint or other appearance of failure by a licensee to comply with the requirements of this chapter.

(d) Nothing in this chapter shall be construed to invalidate a current license to operate an educational institution held by any person in the District of Columbia on March 16, 1989, except that every institution operating in the District of Columbia, with or without a license, on March 16, 1989, shall come into compliance with the provisions of the chapter and rules issued pursuant to the chapter within a reasonable time, as provided in the rules.

(e)(1) The Commission is authorized to charge any institution that is licensed under this chapter for the costs of the Commission's independent evaluations of the institution's facilities and the Commission's observations of evaluations made by accrediting associations. Any institution operating an educational program within the District shall establish, to the satisfaction of the Commission, that the program offered will be in accordance with the educational standards of the Commission.

(2) All revenues collected by, and all payments made to, the Commission under this subsection shall be deposited in the Education Licensure Commission Site Evaluation Fund established by § 38-2607.

(f) Any license issued pursuant to this section shall be issued as an Educational Services endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Apr. 6, 1977, D.C. Law 1-104, § 6(b)-(e), 23 DCR 8734; Sept. 6, 1980, D.C. Law 3-83, § 2, 27 DCR 2894; Mar. 14, 1985, D.C. Law 5-159, § 20, 32 DCR 30; Aug. 1, 1985, D.C. Law 6-15, § 6, 32 DCR 3570; Mar. 16, 1989, D.C. Law 7-217, § 2(f), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(c), 38 DCR 333; Apr. 20, 1999, D.C. Law 12-261, § 2003(x), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(bb), 50 DCR 6913; Apr. 13, 2005, D.C. Law 15-354, § 54, 52 DCR 2638; Oct. 20, 2005, D.C. Law 16-33, § 4002(a), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 5(q), 53 DCR 6794.)

Cross references. — Licensing of institutions of learning to confer degrees, see § 29-615 et seq.

Section references. — This section is referred to in § 38-13611.

Prior Codifications. — 1981 Ed., § 31-1606.

1973 Ed., § 31-2006.

Effect of amendments. — D.C. Law 15-38, in subsec. (f), substituted "an Educational Services endorsement to a basic business license under the basic" for "a Class A Educational Services endorsement to a master business license under the master".

D.C. Law 15-354, in subsec. (b)(3), deleted "within 180 days of March 16, 1989," following "The Mayor".

D.C. Law 16-33, in subsec. (d), designated par. (1) and added par. (2).

D.C. Law 16-191, in subsec. (e), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(bb) of Streamlining Regulation Emergency Act of

2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) amendment of section, see § 4002(a) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 1-104. — For legislative history of D.C. Law 1-104, see Historical and Statutory Notes following § 38-1301.

Legislative history of Law 3-83. — Law 3-83 was introduced in Council and assigned Bill No. 3-259, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 20, 1980, and June 3, 1980, respectively. Signed by the Mayor on June 20, 1980, it was assigned Act No. 3-200 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-159. — Law 5-159 was introduced in Council and assigned Bill No. 5-540, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 20,

1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-15. — Law 6-15 was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-217. — For legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

Legislative history of Law 8-239. — For legislative history of D.C. Law 8-239, see Historical and Statutory Notes following § 38-1302.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — Law 15-38, the “Streamlining Regulation Act of 2003,” was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005,” was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 38-1202.01.

Short title. — Short title of subtitle A of title IV of Law 16-33: Section 4001 of D.C. Law 16-33 provided that subtitle A of title IV of the act may be cited as the Education Licensure Commission Amendment Act of 2005.

CASE NOTES

ANALYSIS

Constitutional rights of colleges and universities.

Construction with related laws.

Police powers.

Purposes.

Validity of regulations and licensure review.

Validity of related laws.

Constitutional rights of colleges and universities.

The First Amendment cannot be used as a shield to protect substandard or fraudulent degree-conferring educational institutions, and the District of Columbia can insist that schools operating degree programs in the District provide the minimal resources and education appropriate to the degree conferred. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Schools are not shielded by the First Amendment from governmental regulation of business conduct deemed detrimental to the public merely because they are engaged in First

Amendment activities. U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Educational institutions, as well as individuals, have a First Amendment right to teach and to academic freedom. U.S.C. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Not every limit on institutional autonomy also implicates academic freedom. U.S.C. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

However valid the government's interest is in regulating a degree-granting educational institution, it generally cannot be pursued by discriminating between particular view points and information. U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Educational institutions have no inherent or constitutional right to confer degrees; rather, degree conferral is business conduct, a corpo-

rate privilege conferred by the state of incorporation. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Although private educational institution had power to confer degrees from state of Florida, the institution, as a foreign corporation, had no constitutional right to operate its degree program in the District of Columbia and the District could impose the same restrictions upon the institution as it imposed upon its own degree-conferring schools. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

District of Columbia cannot place conditions on receipt by private educational institutions of degree conferral and operation of degree programs privileges if the conditions violate the Constitution or require the recipient to forego the exercise of fundamental rights, as the District cannot regulate its businesses in ways that impinge on fundamental rights. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Construction with related laws.

Statute requiring that any educational institution incorporated outside of the District of Columbia undertaking to confer any degree or operating in the District of Columbia obtain a license from the Educational Institution Licensure Commission requires degree conferring institutions incorporated outside the District to obtain a license to operate in the District without regard to where the degree is conferred. D.C. Code 1981, § 29-815. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Police powers.

Fact that the Educational Institution Licensure Commission may inquire into faculty qualifications, library resources, and curriculum content of a private educational institution seeking to operate in the District of Columbia does not make statute allowing such inquiry content related or a constraint on academic freedom, since the inquiry is limited to neutral, sound, academic criteria, not intended or likely to intrude upon legitimate intellectual life of a university, but to insure that a university conferring a degree does have an intellectual life and minimum resources essential to support that life. D.C. Code 1981, § 29-815; U.S.C. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

State has substantial interest and broad discretion in regulating its schools and quality of

education provided to its citizens. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Purposes.

Motivation in enacting statute requiring that private educational institutions incorporated outside of the District of Columbia and undertaking to confer a degree or to operate in the District of Columbia must first obtain a license from the Educational Institution Licensure Commission was not hostility to particular ideas, opinions, or educational philosophy, or a concern with harms that might occur from public exposure to particular information; sole interest of Congress was to ensure that degree-conferring institutions incorporated or operating in the District meet minimal academic standards and to protect the public against harms arising from misuse of degree-conferring powers which arose independently of any message or teaching that might precede degree conferral. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Validity of regulations and licensure review.

Educational Institution Licensure Commission's denial of a license to a Florida private educational institution which sought to operate its doctorate of public administration program in the District of Columbia, on grounds that the institution did not meet requirements for adequate full-time faculty and library resources, was based on substantial evidence and was reasonable and consistent with language and purpose of statute requiring that private educational institutions seeking to operate in the District first received a license from the Commission. D.C. Code 1981, § 29-815. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Regulations and statute providing standards for licensure of a private educational institution seeking to operate in the District of Columbia provided sufficient standards for enforcement and did not permit ad hoc and discriminatory action by the Educational Institution Licensure Commission on invidious and irrelevant grounds, for purposes of challenge that the regulations were impermissibly vague, even though the regulations contained such terms as "adequate," "sufficient" and "reasonable." D.C. Code 1981, § 29-815. *Nova University v. Educational Institution Licensure Com'n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Validity of related laws.

Statute requiring private educational institutions incorporated outside of the District of

Columbia and undertaking to confer degrees to obtain a license as a condition to “operating” in the District did not violate the First Amendment on its face or as applied to an educational institution, incorporated in Florida and authorized to issue degrees in Florida, which sought to “teach” its doctorate of public administration program in the District of Columbia and then confer degrees in Florida. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1. *Nova University v. Educational Institution Licensure Com’n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

Statutory standards for licensure of a private educational institution seeking to operate in the District of Columbia concerning number of faculty and type of library the institution is required to provide were sufficiently clear and did not violate the First Amendment on ground that they were impermissibly vague as applied to private educational institution incorporated in Florida and seeking to operate in the District of Columbia. D.C. Code 1981, § 29-815; U.S. Const.Amend. 1, 5, 14. *Nova University v. Educational Institution Licensure Com’n*, 483 A.2d 1172, 1984 D.C. App. LEXIS 537 (1984).

§ 38-1307. Same — Functions.

In addition to those duties specified in other sections of this chapter, the Commission shall:

(1) Advise the Mayor and the Council with respect to the postsecondary educational needs of the District of Columbia;

(2) File with the Mayor and the Council quarterly reports relating to:

(A) The educational institutions granted or denied licenses under this chapter during the reporting period; and

(B) Other matters that come under the Commission’s purview;

(3) Receive, and cause to be maintained, copies of student academic records in conformity with the following provisions:

(A) In the event an educational institution operating in the District, or any educational institution licensed under this chapter operating outside of the District, proposes to discontinue its operation and has no other repository for its records, the chief administrative officer, by whatever title designated, of the institution shall cause to be filed with the Commission the original or legible true copies of all records of the institution specified by the Commission. The records shall include, at a minimum, the academic records of each former student;

(B) The Commission shall maintain and dispose of the records in accordance with the provisions of Chapter 17 of Title 2. Academic records shall be maintained for at least 50 years from the date the student attended the institution;

(C) The Commission is authorized to charge an institution for all costs involved in the transfer of records; and

(4)(A) In the event it appears to the Commission that the records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the Commission, the Commission may apply to the Superior Court of the District of Columbia for an order authorizing the Commission to seize and take possession of the records; and

(B) Any chief officer or member of a governing board of an institution who willfully fails to comply with the provisions of this subsection or willfully aids and abets any person in a scheme to avoid the requirements of this subsection may be held personally liable for all costs and damages resulting from the conduct, in addition to other penalties provided by this chapter.

(Apr. 6, 1977, D.C. Law 1-104, § 7, 23 DCR 8734; Mar. 16, 1989, D.C. Law 7-217, § 2(g), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(d), 38 DCR 333.)

Cross references. — Licensing of institutions of learning to confer degrees, see § 29-615 et seq.

Prior Codifications. — 1981 Ed., § 31-1607.

1973 Ed., § 31-2007.

Legislative history of Law 1-104. — For legislative history of D.C. Law 1-104, see Historical and Statutory Notes following § 38-1301.

Legislative history of Law 7-217. — For legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

Legislative history of Law 8-239. — For legislative history of D.C. Law 8-239, see Historical and Statutory Notes following § 38-1302.

CASE NOTES

In general.

Educational Institution Licensure Commission's enabling statute gave that agency authority to grant and revoke licenses of institutions but not to adjudicate contract disputes for money damages between private individual and educational institution licensed by agency, and thus student's action for money damages for breach of contract against law school for

failure to provide programs and services listed in school's catalogue and student handbook was not subject to doctrines of exhaustion of administrative remedy and primary jurisdiction, on theory that he should have sought relief from the Commission. D.C. Code 1981, §§ 31-1601 et seq., 31-1603, 31-1605, 31-1607. *Goode v. Antioch University*, 544 A.2d 704, 1988 D.C. App. LEXIS 102 (1988).

§ 38-1308. Supplemental funding.

The Mayor and the Council shall be authorized to obtain supplemental funding for the Commission. The Council shall approve the receipt of any such supplemental funding.

(Apr. 6, 1977, D.C. Law 1-104, § 8, 23 DCR 8734.)

Prior Codifications. — 1981 Ed., § 31-1608.

1973 Ed., § 31-2008.

Legislative history of Law 1-104. — For

legislative history of D.C. Law 1-104, see Historical and Statutory Notes following § 38-1301.

§ 38-1309. Postsecondary educational institution; requirements.

(a) No person or postsecondary educational institution incorporated in the District of Columbia or outside of the District of Columbia shall operate a postsecondary educational institution in the District of Columbia, offer postsecondary education, have the power to grant or confer or offer to grant or confer a postsecondary degree or a diploma or certificate, offer postsecondary courses for credit, or issue transcripts or other documents to reflect credit toward a postsecondary degree, diploma or certificate, unless:

(1) The institution is granted a license to do so from the Commission or granted an exemption by the Commission in accordance with this chapter; and

(2) The institution is either organized or chartered in the District of Columbia and operates, keeps, or maintains a facility in the District through which educational instruction is offered, or organized or chartered outside the District of Columbia and is registered as a foreign corporation pursuant to

§ 29-101.99 or § 29-301.64, and operates, keeps, or maintains a facility in the District through which educational instruction is offered, or is otherwise properly authorized to do business in the District of Columbia and operates, keeps, or maintains a facility in the District through which educational instruction is offered.

(b) No person shall state or imply that its educational program or course of instruction is approved for veteran's training in the District by the District of Columbia State Approving Agency or by the United States Veterans Administration, unless that person has obtained proper approval from the commission.

(c) Except as provided for in this chapter, no person shall sell, barter, or exchange for any consideration, or attempt to sell, barter, or exchange for any consideration, a degree, diploma, or certificate.

(d) The Commission, before granting any license, may require satisfactory evidence:

(1) That, in the case of an individual, unincorporated group of individuals, or incorporated institution, the individual, a majority of the group, or a majority of the trustees, directors, or managers of the incorporated institution are persons of good repute and qualified to conduct an institution of learning; and

(2) That no degree shall be awarded by an institution that is not accredited if more than one-half of the requirements for the degree are earned by correspondence or extramural study, unless this fact is conspicuously noted upon the degree conferred.

(e) No degree shall be granted in medicine or any healing art, or in dentistry, for study pursued or work done by correspondence.

(Apr. 6, 1977, D.C. Law 1-104, § 9, as added Mar. 16, 1989, D.C. Law 7-217, § 2(h), 36 DCR 523; Feb. 5, 1994, D.C. Law 10-68, § 29(a), 40 DCR 6311; Aug. 16, 2008, D.C. Law 17-219, § 4010(b), 55 DCR 7598.)

Prior Codifications. — 1981 Ed., § 31-1609.

Effect of amendments. — D.C. Law 17-219 rewrote subsec. (a)(2), which had read as follows: "(2) The institution is either organized or chartered in the District of Columbia, or organized or chartered outside of the District of Columbia and is registered as a foreign corporation pursuant to § 29-101.99, or § 29-301.64, or is otherwise properly authorized to do business in the District of Columbia."

Legislative history of Law 7-217. — Law 7-217 was introduced in Council and assigned Bill No. 7-86, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988,

respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-292 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

CASE NOTES

Foreign university.

Issue of whether District of Columbia Educational Licensure Commission could issue a li-

cense to foreign university that used the word "American" in its name became moot, in declaratory judgment action brought by private uni-

versity seeking revocation of license of foreign university unless it dropped the word from its name, when the Council of the District amended the District Code to require an educational institution to have a physical presence in the District in order to be eligible for licen-

sure by the Commission, and foreign university was no longer eligible to obtain a license because it did not have a physical presence in the District. *District of Columbia v. Am. Univ.*, 2 A.3d 175, 2010 D.C. App. LEXIS 491 (2010).

§ 38-1310. Exempt institutions.

(a) The following types of educational institutions or activities are excluded from the coverage of this chapter:

(1) Courses of instruction not purporting to lead to a degree conducted by any person solely for the training of the employees of the person, and for which no fee is charged;

(2) Education offered by the District or federal government or any instrumentality of the governments, except course approval for veterans under an Act to amend Chapter 35 of Title 38, United States Code, to provide that after the expiration of the Korean conflict veterans' education and training program, approval of courses under the war orphan's educational assistance program shall be by State approving agencies (38 U.S.C. § 3500 et seq.);

(3) Education solely avocational or recreational in nature and not leading to a degree and institutions offering the education exclusively, as determined by the Commission;

(4) Education offered by an eleemosynary or nonprofit institution, organization, or agency, if no fee is charged for the education and no credit toward a degree or any degree, diploma, or certificate is awarded;

(5) Courses or programs of instruction given by or approved by a professional body, fraternal organization, civic club, or benevolent order principally for the professional education of its own members or advancement or similar purpose and for which no degree or degree credit is awarded and for which there is no public advertising; and

(6) An educational institution that is organized or chartered outside of the District of Columbia and does not operate in the District of Columbia, except that any agent of an institution who operates in the District shall not be exempt, and the Commission may apply the standards of this chapter to the institution in determining whether to license an agent.

(b) A degree-granting institution shall be entitled to a conditional exemption from all other provisions of this chapter if, upon request to the Commission:

(1) It can show that it has been authorized by the Congress of the United States to grant degrees;

(2) It is accredited by a regional accrediting association recognized by the United States Department of Education;

(3) It files annually with the Commission the following:

(A) A current audited financial statement of the institution;

(B) A certified statement as to the institution's accreditation status, including whether any conditions have been imposed and whether any action has been taken toward revoking or limiting that status; and

(C) A copy of each course catalogue and a response to the Commission's annual data survey;

(4) It makes provision for a representative of the Commission to serve as an observer on all visits to the institution by evaluators from a regional accrediting association; and

(5) It furnishes to the Commission a copy of all reports submitted to and received from the accreditation association, including the reports of an evaluation submitted to the institution by the accrediting association and notices of accrediting association action regarding accreditation of the institution.

(c) An institution entitled to a conditional exemption under subsection (b) of this section that is required by a regional accrediting association to show cause why its accreditation should not be revoked, or that has had its accreditation withdrawn, shall notify the Commission immediately of the action by the regional accrediting association. The exemption shall expire and the institution shall become fully subject to the licensing requirements of this chapter as of the date it receives notice of the withdrawal of accreditation status by the regional accrediting association.

(d) The Commission, upon request, may reinstate an institution's conditional exemption once accreditation is re-established and the Commission has determined that it meets the provisions of this chapter appropriate to the exempt status.

(e) A conditional exemption authorized by this section extends only to programs or courses within the scope of the institution's accreditation as certified by the accrediting association.

(f) The Commission shall issue a conditional exemption to an off-campus program offered within the District of Columbia by an unconditionally accredited degree training institution or group of institutions. All other requirements of conditional exemptions under this section shall apply to the programs, when the Commission determines that:

(1) The local offering is for the institution's own students, regularly enrolled on its home campus and does not fulfill more than 25% of the normal degree requirements; or

(2) The local offering is open only to employees of a person, and there is no cost to the employee.

(g) Nothing shall be stated or implied, in any diploma, degree, certificate, or document evidencing same, or elsewhere in the publications or correspondence of the institution that a program excluded from the requirements of this chapter has been reviewed, approved, or authorized by the Commission, the District government or any officer of the District government.

(h) Any self study undertaken by an educational institution as part of the accreditation process, any site evaluation by an accrediting association, or any other report submitted by the educational institution to the accrediting association or by the accrediting association to the educational institution that contains an evaluation judgment about the institution that is not prepared for publication shall, when submitted to the Commission in accordance with this chapter, be exempt from public disclosure under the provisions of subchapter II of Chapter 5 of Title 2, and the Commission shall not disclose the report or take official licensure action solely on the basis of the contents of the report.

The Commission shall disclose whether or not an educational institution has received the award, reaffirmation, amendment, or revocation of accreditation from an accrediting association.

(Apr. 6, 1977, D.C. Law 1-104, § 10, as added Mar. 16, 1989, D.C. Law 7-217, § 2(h), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(e), 38 DCR 333; Feb. 5, 1994, D.C. Law 10-68, § 29(b), 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 31-1610.

Legislative history of Law 7-217. — For legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

Legislative history of Law 8-239. — For

legislative history of D.C. Law 8-239, see Historical and Statutory Notes following § 38-1302.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 38-1309.

§ 38-1311. Bond or surety requirement; Mayor to issue rules.

The Mayor may promulgate rules, subject to review by the Council as provided in § 38-1306(a), to establish a bond or surety requirement not to exceed \$250,000 per institution based on the number of students and cost of instruction and \$3,000 per agent. The bond or security for the institution shall be for the purpose of protecting students should an institution breach its contract with its students, declare bankruptcy or otherwise terminate its educational program without providing adequate student refunds. The bond or security for the agent shall be for the purpose of protecting students from misrepresentation of the education or credentials to be received. The rules may allow the Commission to waive the surety requirement for a financially sound, nonprofit institution that has been licensed for 5 consecutive years.

(Apr. 6, 1977, D.C. Law 1-104, § 11, as added Mar. 16, 1989, D.C. Law 7-217, § 2(h), 36 DCR 523; Mar. 8, 1991, D.C. Law 8-239, § 2(f), 38 DCR 333.)

Prior Codifications. — 1981 Ed., § 31-1611.

Legislative history of Law 7-217. — For legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

Legislative history of Law 8-239. — For legislative history of D.C. Law 8-239, see Historical and Statutory Notes following § 38-1302.

§ 38-1312. Violations; penalties.

(a) Any person or persons who, directly or indirectly, participate in, aid, or assist in offering postsecondary education or the operation of a postsecondary educational institution by any unlicensed individual or individuals, association, or institution, or by any individual or individuals, association, or institution whose license has been revoked, who advertises or claims any authority to offer education, except pursuant to the provisions of this chapter, or who violates a provision of this chapter shall be guilty of a misdemeanor, and upon conviction in the Superior Court of the District of Columbia shall be punished by a fine of not more than \$500.

(b) Each day of noncompliance shall constitute a separate violation of this chapter.

(c) Violations of this chapter shall be prosecuted in the District of Columbia Superior Court by the Corporation Counsel of the District of Columbia.

(d) Nothing contained in this chapter shall preclude any person from being subject to a penalty under provisions of § 28-3904, if the person engages in an unlawful trade practice.

(Apr. 6, 1977, D.C. Law 1-104, § 12, as added Mar. 16, 1989, D.C. Law 7-217, § 2(h), 36 DCR 523.)

Prior Codifications. — 1981 Ed., § 31-1612. legislative history of D.C. Law 7-217, see Historical and Statutory Notes following § 38-1309.

Legislative history of Law 7-217. — For

1309.

§ 38-1313. Transfer of the Education Licensure Commission from the Department of Consumer and Regulatory Affairs to the State Education Office.

(a) All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available to the Department of Consumer and Regulatory Affairs that support the functions of the Education Licensure Commission, established by § 38-1303 are hereby transferred to the State Education Office, established by § 38-2601.

(b) All of the powers, duties, and functions delegated to the Department of Consumer and Regulatory Affairs concerning the activities of the Education Licensure Commission, including those delegated pursuant to this chapter, are hereby transferred to the State Education Office [now Office of the State Superintendent of Education], established by § 38-2601.

(Apr. 6, 1977, D.C. Law 1-104, § 12a, as added Nov. 13, 2003, D.C. Law 15-39, § 303, 50 DCR 5668; Apr. 13, 2005, D.C. Law 15-354, § 84(a), 52 DCR 2638; Oct. 20, 2005, D.C. Law 16-33, § 4002(b), 52 DCR 7503.)

Effect of amendments. — D.C. Law 15-354 validated a previously made technical correction.

D.C. Law 16-33, in the section heading, subsec. (a), and subsec (b), substituted “Education” for “Educational”.

Emergency legislation. — For temporary (90 day) addition, see § 303 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) addition, see § 303 of Fiscal Year 2004 Budget Support Congressional

Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

CHAPTER 14. MEDICAL AND DENTAL COLLEGES.

Subchapter I. Registration

Sec.

38-1401. Registration of medical and dental colleges — Required; permit.

38-1402. Same — Application.

38-1403. Penalty for failure to register.

38-1404. Injunction against operation of college.

38-1405. Repeal provisions.

Subchapter II. Financial Assistance

38-1411. Purpose.

Sec.

38-1412. Grants from Secretary of Education — Authorized.

38-1413. Same — Application.

38-1414. Same — Regulations.

38-1415. Same — Payment.

38-1416. Payments by Mayor to medical and dental schools — Limitations.

38-1417. Grants from Secretary of Education — Applications.

38-1418. Payments by Mayor to medical and dental schools — Method of payment.

38-1419. Definitions.

*Subchapter I. Registration.***§ 38-1401. Registration of medical and dental colleges — Required; permit.**

(a) It shall be unlawful for any medical or dental college claiming the authority to confer, or actually conferring, the degree of doctor of medicine, or doctor of dental surgery, not incorporated by a special act of Congress, to conduct its business in the District of Columbia, unless such college shall be registered by the Mayor of the District of Columbia and granted by him a written permit to commence or continue business in said District in compliance with the requirements of this subchapter.

(b) The permit issued pursuant to this section shall be issued as an Educational Services endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(May 4, 1896, 29 Stat. 112, ch. 154, § 1; Apr. 20, 1999, D.C. Law 12-261, § 2003(y), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(cc), 50 DCR 6913.)

Prior Codifications. — 1981 Ed., § 31-1701.

1973 Ed., § 31-901.

Effect of amendments. — D.C. Law 15-38, in subsec. (b), substituted “an Educational Services endorsement to a basic business license under the basic” for “a Class A Educational Services endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(cc) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15,

1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 38-1306.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1402. Same — Application.

It shall be the duty of the proper officers of any such college, before commencing or continuing business, to apply to the said Mayor for registration and a permit to commence or continue business; and the Council of the District of Columbia is hereby authorized and required to make such regulations concerning the form of such application, the evidence to be adduced in support thereof, and the method of taking such evidence as it may deem best, and shall have power, and it shall be its duty, to give public notice of all hearings upon such applications; and no registration and permit shall be granted until after the Council shall have, by the inquiry and hearing hereinbefore provided for and such other inquiry as it may see fit to make, satisfied itself that all such medical or dental colleges are fully equipped, both by the character and fitness of the faculty and the sufficiency of their appliances, to give suitable and sufficient instruction in the theory and practice of medicine or dental surgery.

(May 4, 1896, 29 Stat. 113, ch. 154, § 2.)

Prior Codifications. — 1981 Ed., § 31-1702.

1973 Ed., § 31-902.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(241) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1403. Penalty for failure to register.

Such of the officers and of the faculty of any such medical or dental college in existence on May 4, 1896, and of every such college thereafter sought to be opened in said District, which shall continue or commence to offer instruction in such capacity without first obtaining registration and permit, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the Superior Court of the District of Columbia, upon an information similar to that filed in the case of violations of the police regulations made by the said Council of the District of Columbia, shall be fined not less than \$25 nor more than \$250, and in default of payment thereof shall be imprisoned in the common jail of said District not less than 30 days nor more than 90 days; said fines when collected to be paid into the Treasury of the United States to the credit of the District of Columbia.

(May 4, 1896, 29 Stat. 113, ch. 154, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Prior Codifications. — 1981 Ed., § 31-1703.

1973 Ed., § 31-903.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(242) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1404. Injunction against operation of college.

In any case when such action shall be necessary in the opinion of the said Mayor to give full effect to the intent of this subchapter he shall have power, and it shall be his duty, to file in the Superior Court of the District of Columbia, in the name of the said District, a petition against the proper parties praying an injunction against the opening or continuance of any such college not registered and granted a permit as aforesaid; and jurisdiction is hereby conferred upon such court to hear and determine such causes.

(May 4, 1896, 29 Stat. 113, ch. 154, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(35).)

Prior Codifications. — 1981 Ed., § 31-1704.

1973 Ed., § 31-904.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1405. Repeal provisions.

All acts and parts of acts enacted prior to May 4, 1896, and all charters obtained by any medical or dental college prior to March 4, 1896, under the general corporation laws in force in said District, so far as inconsistent with this subchapter, are hereby repealed.

(May 4, 1896, 29 Stat. 113, ch. 154, § 6.)

Prior Codifications. — 1981 Ed., § 31-1705. 1973 Ed., § 31-905.

Subchapter II. Financial Assistance.

§ 38-1411. Purpose.

It is the purpose of this subchapter to assist private nonprofit medical and dental schools in the District of Columbia in their critical financial needs in meeting the operational costs required to maintain quality medical and dental educational programs and to increase the number of students in such institutions as a necessary health manpower service to the metropolitan area of the District of Columbia.

(Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 302.)

Prior Codifications. — 1981 Ed., § 31-1711. 1973 Ed., § 31-921.

§ 38-1412. Grants from Secretary of Education — Authorized.

(a) The Secretary of Education (hereinafter in this subchapter referred to as the “Secretary”) is authorized to make grants to the Mayor of the District of Columbia (hereinafter in this subchapter referred to as the “Mayor”) in amounts the Secretary determines to be the minimum amounts necessary to carry out the purposes of this subchapter. The total amount of grants under this section for any fiscal year shall not exceed the sum of:

(1) The product of \$5,000 times the number of full-time students enrolled in private nonprofit accredited medical schools in the District of Columbia; and

(2) The product of \$3,000 times the number of full-time students enrolled in private nonprofit accredited dental schools in the District of Columbia.

(b) For the purposes of this section and § 38-1416, in determining eligibility for, and the amount of, grants with respect to private nonprofit medical and dental schools, consideration shall be given to any grants made to such schools pursuant to the portion of the program under § 773 of the Public Health Service Act [42 U.S.C. § 295f-3, repealed] relating to financial assistance to schools which are in serious financial straits to aid them in meeting their costs of operation.

(c) There are authorized to be appropriated such sums as may be necessary for the fiscal year ending September 30, 1977, to make grants under this section.

(Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 303; Aug. 24, 1974, 88 Stat. 763, Pub. L. 93-389, § 3; June 4, 1976, 90 Stat. 682, Pub. L. 94-308.)

Section references. — This section is referred to in §§ 38-1413, 38-1414, 38-1415, and 38-1416.

Prior Codifications. — 1981 Ed., § 31-1712.

1973 Ed., § 31-922.

References in text. — “Secretary of Education” was substituted for “Secretary of Health, Education and Welfare” in subsection (a) of this section pursuant to § 301 of the Act of October

17, 1979, 93 Stat. 677, Pub. L. 96-88.

"Section 773 of the Public Health Service Act," referred to in subsection (b) of this subsection, was codified as 42 U.S.C. § 295f-3, and was repealed by the Act of October 12, 1976, 90 Stat. 2293, Pub. L. 94-484.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1413. Same — Application.

The Secretary may from time to time set dates by which applications for grants under § 38-1412 for any fiscal year must be filed by the Mayor. A grant under § 38-1412 may be made only if application therefor:

- (1) Is approved by the Secretary;
- (2) Contains such information as the Secretary may require to make the determinations required of him under this subchapter and such assurances as he may find necessary to carry out the purposes of this subchapter; and
- (3) Provides for such fiscal control and accounting procedures and reports and access to the records of the Mayor and the applicant schools as the Secretary may from time to time require in carrying out his functions under this subchapter.

(Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 304.)

Prior Codifications. — 1981 Ed., § 31-1713.

1973 Ed., § 31-923.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1414. Same — Regulations.

For the purposes of § 38-1412 and § 38-1416, regulations of the Secretary shall include provisions relating to the determination of the number of students enrolled in a school, or in a particular year-class in a school, as the case may be, on the basis of estimates, or on the basis of the number of students who were enrolled in a school, or in a particular year-class, as the case may be, in an earlier year, or on such basis as he deems appropriate for making such determinations.

(Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 305.)

Prior Codifications. — 1981 Ed., § 31-1714.

1973 Ed., § 31-924.

§ 38-1415. Same — Payment.

Grants under § 38-1412 may be paid in advance or by way of reimbursement at such intervals as the Secretary may find necessary and with appropriate adjustments on account of overpayments or underpayments previously made.

(Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 306.)

Prior Codifications. — 1981 Ed., § 31-1715. 1973 Ed., § 31-925.

§ 38-1416. Payments by Mayor to medical and dental schools — Limitations.

From funds received under § 38-1412, the Mayor shall make payments (in amounts determined by the Secretary under such § 38-1412) to private nonprofit schools of medicine and dentistry in the District of Columbia. The total of the payments under this section in any fiscal year to a medical school shall not exceed the product of \$5,000 times the number of full-time students enrolled in such school, and the total of payments to a dental school shall not exceed the product of \$3,000 times the number of full-time students enrolled in such school.

(Jan. 5, 1971, 84 Stat. 1934, Pub. L. 91-650, title III, § 307.)

Section references. — This section is referred to in §§ 38-1412, 38-1414, 38-1417, and 38-1418.

Prior Codifications. — 1981 Ed., § 31-1716.

1973 Ed., § 31-926.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1417. Grants from Secretary of Education — Applications.

The Mayor may from time to time set dates by which applications for payments by the Mayor under § 38-1416 for any fiscal year must be filed. A payment under § 38-1416 by the Mayor may be made only if the application therefor:

(1) Is approved by the Mayor upon his determination that the applicant meets the eligibility conditions of this subchapter; and

(2) Contains such information as the Mayor and the Secretary may require to make determinations required under this subchapter and such assurances as they may find necessary to carry out the purposes of this subchapter.

(Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title III, § 308.)

Prior Codifications. — 1981 Ed., § 31-1717.

1973 Ed., § 31-927.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1418. Payments by Mayor to medical and dental schools — Method of payment.

Payments under § 38-1416 by the Mayor may be paid in advance or by way of reimbursement at such intervals as the Mayor may find necessary and with appropriate adjustments on account of overpayments or underpayments previously made.

(Jan. 5, 1971, 84 Stat. 1935, Pub. L. 91-650, title III, § 309.)

Prior Codifications. — 1981 Ed., § 31-1718.

1973 Ed., § 31-928.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-1419. Definitions.

For purposes of this subchapter:

(1) The term “full-time students” means students pursuing a full-time course of study in an accredited school of medicine or school of dentistry leading to a degree of Doctor of Medicine, Doctor of Dentistry, or an equivalent degree.

(2) The terms “school of medicine” and “school of dentistry” mean a school in the District of Columbia which provides training leading, respectively, to a degree of Doctor of Medicine and Doctor of Dentistry, or an equivalent degree, and which is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education of the United States.

(3) The term “nonprofit” as applied to a school of medicine or a school of dentistry means one which is owned and operated by 1 or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(Jan. 5, 1971, 84 Stat. 1325, Pub. L. 91-650, title III, § 310.)

Prior Codifications. — 1981 Ed., § 31-1719.

1973 Ed., § 31-929.

References in text. — “Secretary of Educa-

tion” was substituted for “Commissioner of Education” in paragraph (2) of this section pursuant to § 301 of the Act of October 17, 1979, 93 Stat. 677, Pub. L. 96-88.

CHAPTER 15. NURSES TRAINING CORPS.

Sec.

38-1501. Establishment; financial aid.

38-1502. Administration.

Sec.

38-1503. Rules.

§ 38-1501. Establishment; financial aid.

(a) There shall be established in the District of Columbia ("District") a Nurses Training Corps ("Corps"), which shall provide financial aid to District residents desiring to obtain a Licensed Practical Nurse ("LPN") certificate or an Associate of Arts degree or a Bachelor of Science degree in nursing.

(b) The financial aid provided by the Corps shall include tuition and may include the following:

- (1) The reasonable cost of textbooks and supplies;
- (2) The reasonable transportation costs to and from classes;
- (3) The reasonable cost of child care while attending classes; and
- (4) A stipend to help defray the cost of reasonable living expenses for full-time enrolled students.

(c) In exchange for financial aid, the student shall contract to work for D.C. General Hospital, the Department of Human Services, the Office on Aging, or other District agencies or facilities as designated by the Mayor for a specified number of years after completion of the agreed nursing education.

(d) The basic criteria for selection to the Corps shall include the following:

- (1) Bona fide residency in the District for 2 years immediately prior to application to the Corps;
- (2) Stated interest in nursing and public service in the field of nursing within the District;
- (3) Financial need; and
- (4) Admission to an accredited program of nursing study within the District.

(Oct. 9, 1987, D.C. Law 7-32, § 2, 34 DCR 5312; Apr. 30, 1988, D.C. Law 7-104, § 11, 35 DCR 147.)

Prior Codifications. — 1981 Ed., § 31-2601.

Legislative history of Law 7-32. — Law 7-32 was introduced in Council and assigned Bill No. 7-146, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1987, and June 30, 1987, respectively. Signed by the Mayor on July 23, 1987, it was assigned Act No. 7-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, "Nurses Training Corps Establishment Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987 and Dec. 8, 1987, respectively. Signed by the Mayor on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

§ 38-1502. Administration.

The Department of Human Services shall be responsible for the administration of the Corps.

(Oct. 9, 1987, D.C. Law 7-32, § 3, 34 DCR 5312.)

Prior Codifications. — 1981 Ed., § 31-2602.

legislative history of D.C. Law 7-32, see Historical and Statutory Notes following § 38-1501.

Legislative history of Law 7-32. — For

§ 38-1503. Rules.

Within 120 days of October 9, 1987, the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. The proposed rules shall include provisions regarding the terms of the employment contracts, including the period of service required.

(Oct. 9, 1987, D.C. Law 7-32, § 4, 34 DCR 5312.)

Prior Codifications. — 1981 Ed., § 31-2603.

Emergency legislation. — For temporary (90 day) addition of sections, see §§ 802 to 807 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition of sections, see §§ 809, 810 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

Legislative history of Law 7-32. — For legislative history of D.C. Law 7-32, see Historical and Statutory Notes following § 38-1501.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-32, the “Nurses Training Corps Establishment Act of 1987”, see Mayor’s Order 89-183, August 14, 1989.

Editor’s notes. — Approval of Nurses’ Training Corps rules: Pursuant to Resolution 8-286, the “Nurses Training Corps Establishment Act Proposed Rules Approval Resolution of 1990”, effective November 2, 1990, the Council approved the proposed rules issued pursuant to the Nurses Training Corps Establishment Act of 1987.

CHAPTER 16. LAW SCHOOL CLINICAL PROGRAMS FUNDING [REPEALED].

Sec.
38-1601 to 38-1606. [Repealed].

Sec.
38-1606. Appropriation [Repealed].

§ 38-1601. Findings. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-143, § 2, 25 DCR 6114; Mar. 21, 1995, D.C. Law 10-234, § 3, 42 DCR 28.)

Prior Codifications. — 1981 Ed., § 31-1901.

1973 Ed., § 31-2101.

Legislative history of Law 10-224. — Law 10-224, the “Budget Spending Reduction Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-818. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-361 and transmitted to both Houses of Congress for its review. D.C. Law 10-224 became effective on March 16, 1995.

Legislative history of Law 10-234. — Law 10-234, the “Budget Spending Reduction Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-763, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 1994, and December 6,

1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-377 and transmitted to both Houses of Congress for its review. D.C. Law 10-234 became effective on March 21, 1995.

Editor’s notes. — D.C. Law 10-224, § 3 (41 DCR 8055), eff. March 16, 1995, provided for the temporary repeal of this chapter. Section 4(b) of D.C. Law 10-224 provided for expiration “on the 225th day of its having taken effect or upon the effective date of the Budget Spending Reduction Amendment Act of 1994, whichever occurs first.”

D.C. Law 10-253, title XII, § 1202 (42 DCR 721), eff. March 23, 1995, provided for the temporary repeal of this chapter. Title XIII, § 1301(b) of D.C. Law 10-253 provided for expiration “on the 225th day of its having taken effect or upon the effective date of the Multi-year Budget Spending Reduction and Support Act of 1995, whichever occurs first.”

§ 38-1602. Program established. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-143, § 3, 25 DCR 6114; Mar. 21, 1995, D.C. Law 10-234, § 3, 42 DCR 28.)

Prior Codifications. — 1981 Ed., § 31-1902.

1973 Ed., § 31-2102.

Legislative history of Law 10-224. — Law 10-224, the “Budget Spending Reduction Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-818. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-361 and transmitted to both Houses of Congress for its review. D.C. Law 10-224 became effective on March 16, 1995.

Legislative history of Law 10-234. — Law 10-234, the “Budget Spending Reduction Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-763, which was referred to the Committee of the Whole.

The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-377 and transmitted to both Houses of Congress for its review. D.C. Law 10-234 became effective on March 21, 1995.

Editor’s notes. — D.C. Law 10-224, § 3 (41 DCR 8055), eff. March 16, 1995, provided for the temporary repeal of this chapter. Section 4(b) of D.C. Law 10-224 provided for expiration “on the 225th day of its having taken effect or upon the effective date of the Budget Spending Reduction Amendment Act of 1994, whichever occurs first.”

D.C. Law 10-253, title XII, § 1202 (42 DCR 721), eff. March 23, 1995, provided for the temporary repeal of this chapter. Title XIII, § 1301(b) of D.C. Law 10-253 provided for

expiration "on the 225th day of its having taken effect or upon the effective date of the Multi-

year Budget Spending Reduction and Support Act of 1995, whichever occurs first."

§ 38-1603. Administration of grants. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-143, § 4, 25 DCR 6114; Mar. 21, 1995, D.C. Law 10-234, § 3, 42 DCR 28.)

Prior Codifications. — 1981 Ed., § 31-1903.

1973 Ed., § 31-2103.

Legislative history of Law 10-224. — Law 10-224, the "Budget Spending Reduction Temporary Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-818. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-361 and transmitted to both Houses of Congress for its review. D.C. Law 10-224 became effective on March 16, 1995.

Legislative history of Law 10-234. — Law 10-234, the "Budget Spending Reduction Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-763, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 1994, and December 6,

1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-377 and transmitted to both Houses of Congress for its review. D.C. Law 10-234 became effective on March 21, 1995.

Editor's notes. — D.C. Law 10-224, § 3 (41 DCR 8055), eff. March 16, 1995, provided for the temporary repeal of this chapter. Section 4(b) of D.C. Law 10-224 provided for expiration "on the 225th day of its having taken effect or upon the effective date of the Budget Spending Reduction Amendment Act of 1994, whichever occurs first."

D.C. Law 10-253, title XII, § 1202 (42 DCR 721), eff. March 23, 1995, provided for the temporary repeal of this chapter. Title XIII, § 1301(b) of D.C. Law 10-253 provided for expiration "on the 225th day of its having taken effect or upon the effective date of the Multi-year Budget Spending Reduction and Support Act of 1995, whichever occurs first."

§ 38-1604. Eligibility for funds. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-143, § 5, 25 DCR 6114; Mar. 21, 1995, D.C. Law 10-234, § 3, 42 DCR 28.)

Prior Codifications. — 1981 Ed., § 31-1904.

1973 Ed., § 31-2104.

Legislative history of Law 10-224. — Law 10-224, the "Budget Spending Reduction Temporary Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-818. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-361 and transmitted to both Houses of Congress for its review. D.C. Law 10-224 became effective on March 16, 1995.

Legislative history of Law 10-234. — Law 10-234, the "Budget Spending Reduction Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-763, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 1994, and December 6,

1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-377 and transmitted to both Houses of Congress for its review. D.C. Law 10-234 became effective on March 21, 1995.

Editor's notes. — D.C. Law 10-224, § 3 (41 DCR 8055), eff. March 16, 1995, provided for the temporary repeal of this chapter. Section 4(b) of D.C. Law 10-224 provided for expiration "on the 225th day of its having taken effect or upon the effective date of the Budget Spending Reduction Amendment Act of 1994, whichever occurs first."

D.C. Law 10-253, title XII, § 1202 (42 DCR 721), eff. March 23, 1995, provided for the temporary repeal of this chapter. Title XIII, § 1301(b) of D.C. Law 10-253 provided for expiration "on the 225th day of its having taken effect or upon the effective date of the Multi-year Budget Spending Reduction and Support Act of 1995, whichever occurs first."

§ 38-1605. Prohibited use of funds. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-143, § 6, 25 DCR 6114; Mar. 21, 1995, D.C. Law 10-234, § 3, 42 DCR 28.)

Prior Codifications. — 1981 Ed., § 31-1905.

1973 Ed., § 31-2105.

Legislative history of Law 10-224. — Law 10-224, the “Budget Spending Reduction Temporary Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-818. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-361 and transmitted to both Houses of Congress for its review. D.C. Law 10-224 became effective on March 16, 1995.

Legislative history of Law 10-234. — Law 10-234, the “Budget Spending Reduction Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-763, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 1994, and December 6,

1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-377 and transmitted to both Houses of Congress for its review. D.C. Law 10-234 became effective on March 21, 1995.

Editor’s notes. — D.C. Law 10-224, § 3 (41 DCR 8055), eff. March 16, 1995, provided for the temporary repeal of this chapter. Section 4(b) of D.C. Law 10-224 provided for expiration “on the 225th day of its having taken effect or upon the effective date of the Budget Spending Reduction Amendment Act of 1994, whichever occurs first.”

D.C. Law 10-253, title XII, § 1202 (42 DCR 721), eff. March 23, 1995, provided for the temporary repeal of this chapter. Title XIII, § 1301(b) of D.C. Law 10-253 provided for expiration “on the 225th day of its having taken effect or upon the effective date of the Multi-year Budget Spending Reduction and Support Act of 1995, whichever occurs first.”

§ 38-1606. Appropriation [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-143, § 7, 25 DCR 6114; Mar. 21, 1995, D.C. Law 10-234, § 3, 42 DCR 28.)

Prior Codifications. — 1981 Ed., § 31-1906.

1973 Ed., § 31-2106.

Temporary Addition of Section. — Sections 802 to 810 of D.C. Law 14-164 provided:

“Sec. 802. Definitions.

“For the purposes of this title, the term:

“(1) ‘District’ means the District of Columbia.

“(2) ‘Needy Families’ means any family that qualifies for federal assistance as defined by the guidelines in the Federal Application for Student Financial Aid.

“(3) ‘Tax check-off’ means the postsecondary education assistance tax check-off system established in D.C. Official Code § 47-1812.11c.

“(4) ‘Trust Fund’ means the Postsecondary Education Assistance Trust Fund established in section 803.

“Sec. 803. Establishment of the Postsecondary Education Assistance Trust Fund.

“(a) There is established a Postsecondary Education Assistance Trust Fund into which shall be deposited the funds generated by the tax check-off established by D.C. Code § 47-

1812.11c and any other funds generated by the Trust Fund’s Board of Directors.

“(b) The Trust Fund shall be used to assist needy residents of the District of Columbia in pursuing postsecondary education opportunities.

“Sec. 804. Establishment of Board of Directors.

“(a) A self-perpetuating Board of Directors is established to manage the affairs of the Trust Fund. The Board of Directors shall consist of 11 members. The D.C. Treasurer, the Director of the Department of Human Services, and the Director of the Office of Postsecondary Education, Research and Assistance shall serve as ex-officio members of the Board of Directors. The remaining 8 members shall include parents of individuals who qualify to receive trust funds and representatives of organizations who have demonstrated a knowledge of postsecondary education and who reflect a diversity of gender and ethnicity.

“(b) The D.C. Treasurer, the Director of the Department of Human Services, and the Director of the Office of Postsecondary Education,

Research and Assistance shall serve terms as members of the Board of Directors for the same duration as the terms of their respective offices.

"(c) The 8 initial nongovernmental members shall serve the following terms: 2 members shall serve 3 years; 3 members shall serve 2 years; and 3 members shall serve one year.

"(d) The 8 initial nongovernmental members shall be appointed by the Mayor.

"(e) If one of the 8 initial nongovernmental members is unable to serve or is removed, the remaining members shall select a replacement member according to the representational requirements of subsection (a) of this section.

"(f) The Board of Directors shall appoint nongovernmental replacement members so that subsequent Board of Directors meet the representational requirements of subsection (a) of this section and the bylaws adopted by the Board of Directors. A succeeding member shall serve the balance of the term of the member that he or she succeeds if the term has not expired. A succeeding member who succeeds a member whose term has expired shall serve a term of 3 years. No member shall serve more than 2 consecutive terms, whether partial or full.

"(g) Members shall be compensated only for out-of-pocket expenses incurred in the performance of their responsibilities as members of the Board of Directors.

"(h) The Board of Directors shall elect a chairperson from among its members. The Board of Directors may elect other officers and form committees as it considers appropriate.

"(i) A member may be removed by a $\frac{2}{3}$ vote of the remaining members.

"Sec. 805. Powers and responsibilities of the Board of Directors.

"The Board of Directors shall:

"(1) Administer the Trust Fund;

"(2) File such papers as may be required by the Recorder of Deeds of the District of Columbia;

"(3) Have the power to adopt, amend, or repeal bylaws for operation of the Trust Fund;

"(4) Meet not less than quarterly, at a time to be determined;

"(5) Assess the needs of postsecondary educational programs in the District;

"(6) Develop and implement program recommendations to assist residents with the cost of postsecondary education;

"(7) Develop and implement proposal solicitations and establish criteria for the awarding of grants to assist the postsecondary educational needs of District residents;

"(8) Review, approve, and monitor the expenditures of the Trust Fund and postsecondary education programs;

"(9) Provide information to the public about the purpose and work of the Trust Fund;

"(10) Hire and monitor an executive director for the Trust Fund; and

"(11) Invite comments and recommendations at least annually from interested postsecondary educational coalitions and community organizations on the Trust Fund's program plans.

"Sec. 806. Administration of Trust Fund.

"(a) Administrative expenses shall not exceed 10% of the funds available in the Trust Fund.

"(b) One year after its original formation, the Board of Directors shall develop a District-wide plan for the distribution of funds from the Trust Fund. The Board of Directors shall develop subsequent plans before September 30th of each year. The purpose of the annual plan is to assure that the funds are awarded to needy District residents.

"(c) The Board of Directors shall distribute funds that are generated by the tax check-off system established in D.C. Official Code § 47-1812.11c on a regular schedule, as determined by the Board.

"(d) The Board of Directors shall publish guidelines pursuant to which students who are residents of the District of Columbia may apply for funds to pursue secondary educational opportunities.

"(e) By September 30th of each year, the Board of Directors shall publish an estimated projection of funds generated by the tax check-off based on the income tax returns filed by April 15th of each year.

"(f) The Board of Directors shall submit an annual financial report to the Mayor and the Council no later than March 1st of each year.

"(g) The Board of Directors shall publicize the availability of a tax check-off for students who need postsecondary education assistance. The Mayor shall assist the Board of Directors in educating the public regarding the tax check-off and taxpayer participation in the tax check-off.

"(h) The Board of Directors shall take any necessary steps to encourage the federal government to match the funds generated through the tax check-off.

"(i) The Board of Directors may recommend other means to generate funds to assist needy families with postsecondary education opportunities.

"(j) The Board of Directors shall encourage collaborative efforts and foster a public-private partnership in the development of postsecondary education programs.

"(k) The Board of Directors shall advise the Mayor and the Council on the actions needed to insure effective funding for postsecondary education for needy families.

"Sec. 807. Rules of procedure; contributions.

"(a) The Board of Directors may develop rules of organization and procedure pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.).

"(b) The Board of Directors shall encourage and is authorized to accept in-kind contributions from public or private agencies.

"(c) The Board of Directors shall publish a list of grant awards in an annual report. The Board of Directors shall request the assistance of the media in publicizing to the general public the grant awards.

"Sec. 808. Rules.

"(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this title.

"(b) The rules shall include standards for:

"(1) The transfer of funds to the Trust Fund; and

"(2) The reimbursement of costs incurred by the Mayor in the collection, processing, accounting, or disbursement of the funds generated by the tax check-off.

"Sec. 809. Applicability.

"The provisions of this title shall apply to any tax year beginning after December 31, 2001.

"Sec. 810. Dissolution.

"Except as otherwise provided in a contract or legacy transferring or loaning property to the Trust Fund, upon dissolution of the Trust Fund, all remaining assets shall be transferred to the Mayor. The Mayor shall make every effort to use the assets to provide postsecondary education assistance to needy families."

Section 1101(b) of D.C. Law 14-164 provided that the act shall expire after 225 days of its having taken effect.

Sections 801 to 810 of D.C. Law 15-2 read as follows:

"Sec. 801. Short title.

"This title may be cited as the 'Postsecondary Education Assistance Trust Fund Tax Check-Off Temporary Act of 2003'.

"Sec. 802. Definitions.

"For the purposes of this title, the term:

"(1) 'District' means the District of Columbia.

"(2) 'Needy Families' means any family that qualifies for federal assistance as defined by the guidelines in the Federal Application for Student Financial Aid.

"(3) 'Tax check-off' means the postsecondary education assistance tax check-off system established in D.C. Official Code § 47-1812.11c.

"(4) 'Trust Fund' means the Postsecondary Education Assistance Trust Fund established in section 803.

"Sec. 803. Establishment of the Postsecondary Education Assistance Trust Fund.

"(a) There is established a Postsecondary Education Assistance Trust Fund into which shall be deposited the funds generated by the tax check-off established by D.C. Code § 47-1812.11c and any other funds generated by the Trust Fund's Board of Directors.

"(b) The Trust Fund shall be used to assist needy residents of the District of Columbia in pursuing postsecondary education opportunities.

"Sec. 804. Establishment of Board of Directors.

"(a) A self-perpetuating Board of Directors is established to manage the affairs of the Trust Fund. The Board of Directors shall consist of 11 members. The D.C. Treasurer, the Director of the Department of Human Services, and the Director of the Office of Postsecondary Education, Research and Assistance shall serve as ex-officio members of the Board of Directors. The remaining 8 members shall include parents of individuals who qualify to receive trust funds and representatives of organizations who have demonstrated a knowledge of postsecondary education and who reflect a diversity of gender and ethnicity.

"(b) The D.C. Treasurer, the Director of the Department of Human Services, and the Director of the Office of Postsecondary Education, Research and Assistance shall serve terms as members of the Board of Directors for the same duration as the terms of their respective offices.

"(c) The 8 initial nongovernmental members shall serve the following terms: 2 members shall serve 3 years; 3 members shall serve 2 years; and 3 members shall serve one year.

"(d) The 8 initial nongovernmental members shall be appointed by the Mayor.

"(e) If one of the 8 initial nongovernmental members is unable to serve or is removed, the remaining members shall select a replacement member according to the representational requirements of subsection (a) of this section.

"(f) The Board of Directors shall appoint nongovernmental replacement members so that subsequent Board of Directors meet the representational requirements of subsection (a) of this section and the bylaws adopted by the Board of Directors. A succeeding member shall serve the balance of the term of the member that he or she succeeds if the term has not expired. A succeeding member who succeeds a member whose term has expired shall serve a term of 3 years. No member shall serve more than 2 consecutive terms, whether partial or full.

"(g) Members shall be compensated only for out-of-pocket expenses incurred in the performance of their responsibilities as members of the Board of Directors.

"(h) The Board of Directors shall elect a chairperson from among its members. The Board of Directors may elect other officers and form committees as it considers appropriate.

"(i) A member may be removed by a $\frac{2}{3}$ vote of the remaining members.

"Sec. 805. Powers and responsibilities of the Board of Directors.

"The Board of Directors shall:

“(1) Administer the Trust Fund;
“(2) File such papers as may be required by the Recorder of Deeds of the District of Columbia;
“(3) Have the power to adopt, amend, or repeal bylaws for operation of the Trust Fund;
“(4) Meet not less than quarterly, at a time to be determined;
“(5) Assess the needs of postsecondary educational programs in the District;
“(6) Develop and implement program recommendations to assist residents with the cost of postsecondary education;
“(7) Develop and implement proposal solicitations and establish criteria for the awarding of grants to assist the postsecondary educational needs of District residents;
“(8) Review, approve, and monitor the expenditures of the Trust Fund and postsecondary education programs;
“(9) Provide information to the public about the purpose and work of the Trust Fund;
“(10) Hire and monitor an executive director for the Trust Fund; and
“(11) Invite comments and recommendations at least annually from interested postsecondary educational coalitions and community organizations on the Trust Fund’s program plans.
“Sec. 806. Administration of Trust Fund.
“(a) Administrative expenses shall not exceed 10% of the funds available in the Trust Fund.
“(b) One year after its original formation, the Board of Directors shall develop a District-wide plan for the distribution of funds from the Trust Fund. The Board of Directors shall develop subsequent plans before September 30th of each year. The purpose of the annual plan is to assure that the funds are awarded to needy District residents.
“(c) The Board of Directors shall distribute funds that are generated by the tax check-off system established in D.C. Official Code § 47-1812.11c on a regular schedule, as determined by the Board.
“(d) The Board of Directors shall publish guidelines pursuant to which students who are residents of the District of Columbia may apply for funds to pursue secondary educational opportunities.
“(e) By September 30th of each year, the Board of Directors shall publish an estimated projection of funds generated by the tax check-off based on the income tax returns filed by April 15th of each year.
“(f) The Board of Directors shall submit an annual financial report to the Mayor and the Council no later than March 1st of each year.
“(g) The Board of Directors shall publicize the availability of a tax check-off for students who need postsecondary education assistance. The Mayor shall assist the Board of Directors in educating the public regarding the tax check-off and taxpayer participation in the tax check-off.

“(h) The Board of Directors shall take any necessary steps to encourage the federal government to match the funds generated through the tax check-off.
“(i) The Board of Directors may recommend other means to generate funds to assist needy families with postsecondary education opportunities.
“(j) The Board of Directors shall encourage collaborative efforts and foster a public-private partnership in the development of postsecondary education programs.
“(k) The Board of Directors shall advise the Mayor and the Council on the actions needed to insure effective funding for postsecondary education for needy families.
“Sec. 807. Rules of procedure; contributions.
“(a) The Board of Directors may develop rules of organization and procedure pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.).
“(b) The Board of Directors shall encourage and is authorized to accept in-kind contributions from public or private agencies.
“(c) The Board of Directors shall publish a list of grant awards in an annual report. The Board of Directors shall request the assistance of the media in publicizing to the general public the grant awards.
“Sec. 808. Rules.
“(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this title.
“(b) The rules shall include standards for:
“(1) The transfer of funds to the Trust Fund; and
“(2) The reimbursement of costs incurred by the Mayor in the collection, processing, accounting, or disbursement of the funds generated by the tax check-off.
“Sec. 809. Applicability.
“The provisions of this title shall apply to any tax year beginning after December 31, 2001.
“Sec. 810. Dissolution.
“Except as otherwise provided in a contract or legacy transferring or loaning property to the Trust Fund, upon dissolution of the Trust Fund, all remaining assets shall be transferred to the Mayor. The Mayor shall make every effort to use the assets to provide postsecondary education assistance to needy families.”
Section 1101(b) of D.C. Law 15-2 provided that the act shall expire after 225 days of its having taken effect.
Sections 801 to 810 of D.C. Law 15-117 read as follows:
“Sec. 801. Short title.
“This title may be cited as the ‘Postsecondary Education Assistance Trust Fund Tax Check-Off Temporary Act of 2004’.

"Sec. 802. Definitions.

"For the purposes of this title, the term:

"(1) 'District' means the District of Columbia.

"(2) 'Needy Families' means any family that qualifies for federal assistance as defined by the guidelines in the Federal Application for Student Financial Aid.

"(3) 'Tax check-off' means the postsecondary education assistance tax check-off system established in D.C. Official Code § 47-1812.11c.

"(4) 'Trust Fund' means the Postsecondary Education Assistance Trust Fund established in section 803.

"Sec. 803. Establishment of the Postsecondary Education Assistance Trust Fund.

"(a) There is established a Postsecondary Education Assistance Trust Fund into which shall be deposited the funds generated by the tax check-off established by D.C. Code § 47-1812.11c and any other funds generated by the Trust Fund's Board of Directors.

"(b) The Trust Fund shall be used to assist needy residents of the District of Columbia in pursuing postsecondary education opportunities.

"Sec. 804. Establishment of Board of Directors.

"(a) A self-perpetuating Board of Directors is established to manage the affairs of the Trust Fund. The Board of Directors shall consist of 11 members. The D.C. Treasurer, the Director of the Department of Human Services, and the Director of the Office of Postsecondary Education, Research and Assistance shall serve as ex-officio members of the Board of Directors. The remaining 8 members shall include parents of individuals who qualify to receive trust funds and representatives of organizations who have demonstrated a knowledge of postsecondary education and who reflect a diversity of gender and ethnicity.

"(b) The D.C. Treasurer, the Director of the Department of Human Services, and the Director of the Office of Postsecondary Education, Research and Assistance shall serve terms as members of the Board of Directors for the same duration as the terms of their respective offices.

"(c) The 8 initial nongovernmental members shall serve the following terms: 2 members shall serve 3 years; 3 members shall serve 2 years; and 3 members shall serve one year.

"(d) The 8 initial nongovernmental members shall be appointed by the Mayor.

"(e) If one of the 8 initial nongovernmental members is unable to serve or is removed, the remaining members shall select a replacement member according to the representational requirements of subsection (a) of this section.

"(f) The Board of Directors shall appoint nongovernmental replacement members so that subsequent Board of Directors meet the representational requirements of subsection (a) of this section and the bylaws adopted by the

Board of Directors. A succeeding member shall serve the balance of the term of the member that he or she succeeds if the term has not expired. A succeeding member who succeeds a member whose term has expired shall serve a term of 3 years. No member shall serve more than 2 consecutive terms, whether partial or full.

"(g) Members shall be compensated only for out-of-pocket expenses incurred in the performance of their responsibilities as members of the Board of Directors.

"(h) The Board of Directors shall elect a chairperson from among its members. The Board of Directors may elect other officers and form committees as it considers appropriate.

"(i) A member may be removed by a $\frac{2}{3}$ vote of the remaining members.

"Sec. 805. Powers and responsibilities of the Board of Directors.

"The Board of Directors shall:

"(1) Administer the Trust Fund;

"(2) File such papers as may be required by the Recorder of Deeds of the District of Columbia;

"(3) Have the power to adopt, amend, or repeal bylaws for operation of the Trust Fund;

"(4) Meet not less than quarterly, at a time to be determined;

"(5) Assess the needs of postsecondary educational programs in the District;

"(6) Develop and implement program recommendations to assist residents with the cost of postsecondary education;

"(7) Develop and implement proposal solicitations and establish criteria for the awarding of grants to assist the postsecondary educational needs of District residents;

"(8) Review, approve, and monitor the expenditures of the Trust Fund and postsecondary education programs;

"(9) Provide information to the public about the purpose and work of the Trust Fund;

"(10) Hire and monitor an executive director for the Trust Fund; and

"(11) Invite comments and recommendations at least annually from interested postsecondary educational coalitions and community organizations on the Trust Fund's program plans.

"Sec. 806. Administration of Trust Fund.

"(a) Administrative expenses shall not exceed 10% of the funds available in the Trust Fund.

"(b) One year after its original formation, the Board of Directors shall develop a District-wide plan for the distribution of funds from the Trust Fund. The Board of Directors shall develop subsequent plans before September 30th of each year. The purpose of the annual plan is to assure that the funds are awarded to needy District residents.

"(c) The Board of Directors shall distribute funds that are generated by the tax check-off system established in D.C. Official Code § 47-

1812.11c on a regular schedule, as determined by the Board.

"(d) The Board of Directors shall publish guidelines pursuant to which students who are residents of the District of Columbia may apply for funds to pursue secondary educational opportunities.

"(e) By September 30th of each year, the Board of Directors shall publish an estimated projection of funds generated by the tax check-off based on the income tax returns filed by April 15th of each year.

"(f) The Board of Directors shall submit an annual financial report to the Mayor and the Council no later than March 1st of each year.

"(g) The Board of Directors shall publicize the availability of a tax check-off for students who need postsecondary education assistance. The Mayor shall assist the Board of Directors in educating the public regarding the tax check-off and taxpayer participation in the tax check-off.

"(h) The Board of Directors shall take any necessary steps to encourage the federal government to match the funds generated through the tax check-off.

"(i) The Board of Directors may recommend other means to generate funds to assist needy families with postsecondary education opportunities.

"(j) The Board of Directors shall encourage collaborative efforts and foster a public-private partnership in the development of postsecondary education programs.

"(k) The Board of Directors shall advise the Mayor and the Council on the actions needed to insure effective funding for postsecondary education for needy families.

"Sec. 807. Rules of procedure; contributions.

"(a) The Board of Directors may develop rules of organization and procedure pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.).

"(b) The Board of Directors shall encourage and is authorized to accept in-kind contributions from public or private agencies.

"(c) The Board of Directors shall publish a list of grant awards in an annual report. The Board of Directors shall request the assistance of the media in publicizing to the general public the grant awards.

"Sec. 808. Rules.

"(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue rules to implement the provisions of this title.

"(b) The rules shall include standards for:

"(1) The transfer of funds to the Trust Fund; and

"(2) The reimbursement of costs incurred by the Mayor in the collection, processing, ac-

counting, or disbursement of the funds generated by the tax check-off.

"Sec. 809. Applicability.

"The provisions of this title shall apply to any tax year beginning after December 31, 2001.

"Sec. 810. Dissolution.

"Except as otherwise provided in a contract or legacy transferring or loaning property to the Trust Fund, upon dissolution of the Trust Fund, all remaining assets shall be transferred to the Mayor. The Mayor shall make every effort to use the assets to provide postsecondary education assistance to needy families."

Section 1101(b) of D.C. Law 15-117 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of Postsecondary Education Assistance Trust Fund provisions, see §§ 801 to 810 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition of Postsecondary Education Assistance Trust Fund tax check-off provisions, see §§ 801 to 810 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

Legislative history of Law 10-224. — Law 10-224, the "Budget Spending Reduction Temporary Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-818. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-361 and transmitted to both Houses of Congress for its review. D.C. Law 10-224 became effective on March 16, 1995.

Legislative history of Law 10-234. — Law 10-234, the "Budget Spending Reduction Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-763, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-377 and transmitted to both Houses of Congress for its review. D.C. Law 10-234 became effective on March 21, 1995.

Legislative history of Law 14-164. — For Law 14-164, see notes following § 38-621.

Legislative history of Law 15-2. — Law 15-2, the "Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003", was introduced in Council and assigned Bill No. 15-28, and was retained by Council. The Bill was adopted on first and second readings on January 7, 2003, and February 4, 2003, respectively. Signed by the Mayor on February

24, 2003, it was assigned Act No. 15-20 and transmitted to both Houses of Congress for its review. D.C. Law 15-2 became effective on May 3, 2003.

Legislative history of Law 15-117. — For Law 15-117, see notes following § 38-621.

Editor's notes. — D.C. Law 10-224, § 3 (41 DCR 8055), eff. March 16, 1995, provided for the temporary repeal of this chapter. Section 4(b) of D.C. Law 10-224 provided for expiration "on the 225th day of its having taken effect or

upon the effective date of the Budget Spending Reduction Amendment Act of 1994, whichever occurs first."

D.C. Law 10-253, title XII, § 1202 (42 DCR 721), eff. March 23, 1995, provided for the temporary repeal of this chapter. Title XIII, § 1301(b) of D.C. Law 10-253 provided for expiration "on the 225th day of its having taken effect or upon the effective date of the Multi-year Budget Spending Reduction and Support Act of 1995, whichever occurs first."

SUBTITLE IV. PUBLIC EDUCATION — CHARTER SCHOOLS.

CHAPTER 17. PUBLIC CHARTER SCHOOLS.

Subchapter I. Definitions; Findings; Purposes

Sec.

38-1701.01 to 38-1701.03. [Repealed].

Subchapter II. Establishment of Charters

Sec.

38-1702.01 to 38-1702.19. [Repealed].

Subchapter I. Definitions; Findings; Purposes.

§§ 38-1701.01 to 38-1701.03. Definitions; findings; purposes [Repealed].

Repealed.

(May 29, 1996, D.C. Law 11-135, § 101, 43 DCR 1699; Mar. 14, 2007, D.C. Law 16-268, § 3(a), 54 DCR 833; June 12, 2007, D.C. Law 17-9, § 803, 54 DCR 4102.)

Prior Codifications. — 1981 Ed., § 31-2801.

Legislative history of Law 11-135. — Law 11-135, the “Public Charter Schools Act of 1996,” was introduced in Council and assigned Bill No. 11-318, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the Mayor on March 26, 1996, it was assigned Act No. 11-243 and transmitted to both Houses of Congress for its review. D.C. Law 11-135 became effective on May 29, 1996.

Legislative history of Law 16-268. — Law

16-268, the “Public Charter School Assets and Facilities Preservation Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-624, which was referred to Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 6, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-624 and transmitted to both Houses of Congress for its review. D.C. Law 16-268 became effective on March 14, 2007.

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-103.

Subchapter II. Establishment of Charters.

§§ 38-1702.01 to 38-1702.19. Chartering authority; charter petition; approval of charter petitions or renewal applications; federal agencies; duties and responsibilities of charter schools; Board of Trustees of a charter school; admission, enrollment, and withdrawal; employees; monitoring; mandatory dissolution; reduced fares for public transportation; District of Columbia public school services; application of laws; annual budgets for public schools; development of zero-based budget request and school-by-school gross operating budgets; calculation of

number of students; fiscal Year 1996 payments to charter schools; payments to charter schools; federal grant funds [Repealed].

Repealed.

(May 29, 1996, D.C. Law 11-135, § 201, 43 DCR 1699; Apr. 24, 2007, D.C. Law 16-305, § 54(a), 53 DCR 6198; June 12, 2007, D.C. Law 17-9, § 803, 54 DCR 4102.)

Prior Codifications. — 1981 Ed., § 31-2811.

Temporary Amendment of Section. — Section 2 of D.C. Laws 13-143 added subsec. (e).

Subsection 5(b) of D.C. Laws 13-143 Provided: "This act shall expire after 225 days of its having taken effect or upon the effective date of the Moratorium on Conversion of Existing District of Columbia Public Schools into Charter Schools Amendment Act of 2000, or upon the date that final action is taken on Bill 13-582, the "District of Columbia School Reform Amendment Act of 1999" and Bill 13-583, the "District of Columbia Public Charter School Conversion Petition Process Amendment Act of 2000", or on amendments in the nature of a substitute to these two bills, whichever occurs first."

Legislative history of Law 11-135. — For legislative history of D.C. Law 11-135, see Historical and Statutory Notes following § 38-1701.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 38-911.

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-103.

Editor's notes. — Section 153 of Public Law 106-113 Amended Section 603(e)(2)(B) of the Student Loan Marketing Association Reorganization Act of 1996 (Public Law 104-208; 110 Stat. 3009-293).

Section 161 of Public Law 106-522 amended Section 603(e) of the Student Association Reorganization Act of 1996 (Public Law 104-208; 110 Stat. 3009-293).

CHAPTER 18. DISTRICT OF COLUMBIA SCHOOL REFORM (PUBLIC CHARTER SCHOOLS).

Sec.

- 38-1800.01. Short title.
- 38-1800.02. Definitions.
- 38-1800.03. General effective date.

Subchapter I. District of Columbia Reform Plan

- 38-1801.01. Long-term reform plan.
- 38-1801.02. Superintendent's report on reforms.
- 38-1801.03. District of Columbia Council report.

Subchapter II. Public Charter Schools

- 38-1802.01. Process for filing charter petitions.
- 38-1802.02. Contents of petition.
- 38-1802.03. Process for approving or denying public charter school petitions.
- 38-1802.04. Duties, powers, and other requirements, of public charter schools.
- 38-1802.05. Board of Trustees of a public charter school.
- 38-1802.06. Student admission, enrollment, and withdrawal.
- 38-1802.07. Employees.
- 38-1802.08. Reduced fares for public transportation.
- 38-1802.09. District of Columbia public school services to public charter schools.
- 38-1802.10. Application of law.
- 38-1802.11. Powers and duties of eligible chartering authorities.
- 38-1802.12. Charter renewal.
- 38-1802.13. Charter revocation.
- 38-1802.13a. Mandatory dissolution.
- 38-1802.14. Public Charter School Board.
- 38-1802.15. Federal entities.

Subchapter III. World Class School Task Force, Core Curriculum, Content Standards, Assessments, and Promotion Gates

Subpart A. World Class School Task Force, Core Curriculum, Content Standards, Assessments

- 38-1803.11. Grant authorized and recommendation required.
- 38-1803.12. Consultation.
- 38-1803.13. Administrative provisions.
- 38-1803.14. Consultants.
- 38-1803.15. Authorization of appropriations.

Subpart B. Promotion Gates

- 38-1803.21. Promotion gates.

Subchapter IV. Per Capita District of Columbia Public School and Public Charter School Funding

- 38-1804.01. Annual budgets for schools.

Sec.

- 38-1804.02. Calculation of number of students.
- 38-1804.03. Payments.

Subchapter V. School Facilities Repair and Improvement

Subpart A. School Facilities

- 38-1805.50. Definitions.
- 38-1805.51. [Repealed].
- 38-1805.52. Facilities Master Plan.

Subpart B. Waivers

- 38-1805.61. Waivers.

Subpart C. Gifts, Donations, Bequests, and Devises

- 38-1805.71. Gifts, donations, bequests, and devises.

Subchapter VI. Partnerships with Business

- 38-1806.01. Purpose.
- 38-1806.02. Duties of the Superintendent of the District of Columbia public schools.
- 38-1806.03. Eligibility criteria for private, non-profit corporation.
- 38-1806.04. Duties of the private, nonprofit corporation.
- 38-1806.05. Matching funds.
- 38-1806.06. Report.
- 38-1806.07. Jobs for D.C. Graduates Program.
- 38-1806.08. Authorization of appropriations.
- 38-1806.09. Termination of federal support; sense of the Congress relating to continuation of activities.

Subchapter VII. Management and Fiscal Accountability; Preservation of School-Based Resources

- 38-1807.51. Management support systems.
- 38-1807.52. Access to fiscal and staffing data.
- 38-1807.53. Development of fiscal year 1997 budget request.
- 38-1807.54, 38-1807.55. [Reserved].
- 38-1807.56. [Repealed].
- 38-1807.57. Preservation of school-based staff positions.

Subchapter VIII. Establishment and Organization of the Commission on Consensus Reform in the District of Columbia Public Schools

- 38-1808.51 to 38-1808.58. [Expired].

Subchapter IX. Parent Attendance at Parent-Teacher Conferences

Sec.

38-1809.01. Policy.

§ 38-1800.01. Short title.

This chapter may be cited as the “District of Columbia School Reform Act of 1995”.

(Apr. 26, 1996, 110 Stat. 1321 226, Pub. L. 104-134, § 2001.)

§ 38-1800.02. Definitions.

Except as otherwise provided, for purposes of this chapter:

(1) *Appropriate congressional committees.* — The term “appropriate congressional committees” means:—

(A) The Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate;

(B) The Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate; and

(C) The Committee on Government Reform and Oversight of the House of Representatives and the Committee on Governmental Affairs of the Senate.

(2) *Authority.* — The term “Authority” means the District of Columbia Financial Responsibility and Management Assistance Authority established under § 47-391.01(a).

(3) *Average daily attendance.* — The term “average daily attendance” means the aggregate attendance of students of the school during the period divided by the number of days during the period in which:

(A) The school is in session; and

(B) The students of the school are under the guidance and direction of teachers.

(4) *Average daily membership.* — The term “average daily membership” means the aggregate enrollment of students of the school during the period divided by the number of days during the period in which:

(A) The school is in session; and

(B) The students of the school are under the guidance and direction of teachers.

(5) *Board of Education.* — The term “Board of Education” means the Board of Education of the District of Columbia.

(6) *Board of Trustees.* — The term “Board of Trustees” means the governing board of a public charter school, the members of which are selected pursuant to the charter granted to the school and in a manner consistent with this chapter.

(7) *Consensus Commission.* — The term “Consensus Commission” means the Commission on Consensus Reform in the District of Columbia public schools established under subchapter VIII of this chapter.

(8) *Core curriculum.* — The term “core curriculum” means the concepts, factual knowledge, and skills that students in the District of Columbia should

learn in kindergarten through grade 12 in academic content areas, including, at a minimum, English, mathematics, science, and history.

(9) *District of Columbia Council.* — The term “District of Columbia Council” means the Council of the District of Columbia established pursuant to § 1-204.01.

(10) *District of Columbia government.* —

(A) *In general.* — The term “District of Columbia Government” means the government of the District of Columbia, including:

(i) Any department, agency, or instrumentality of the government of the District of Columbia;

(ii) Any independent agency of the District of Columbia established under part F of title IV of the District of Columbia Home Rule Act;

(iii) Any other agency, board, or commission established by the Mayor or the District of Columbia Council;

(iv) The courts of the District of Columbia;

(v) The District of Columbia Council; and

(vi) Any other agency, public authority, or public nonprofit corporation that has the authority to receive moneys directly or indirectly from the District of Columbia (other than moneys received from the sale of goods, the provision of services, or the loaning of funds to the District of Columbia).

(B) *Exception.* — The term “District of Columbia Government” neither includes the Authority nor a public charter school.

(11) *District of Columbia Government Retirement System.* — The term “District of Columbia Government retirement system” means the retirement programs authorized by the District of Columbia Council or the Congress for employees of the District of Columbia Government.

(12) *District of Columbia public school.* —

(A) *In general.* — The term “District of Columbia public school” means a public school in the District of Columbia that offers classes:

(i) At any of the grade levels from prekindergarten through grade 12; or

(ii) Leading to a secondary school diploma, or its recognized equivalent.

(B) *Exception.* — The term “District of Columbia public school” does not include a public charter school.

(13) *Districtwide assessments.* — The term “districtwide assessments” means a variety of assessment tools and strategies (including individual student assessments under subparagraph (E)(ii) of this paragraph administered by the Superintendent to students enrolled in District of Columbia public schools and public charter schools that:

(A) Are aligned with the District of Columbia’s content standards and core curriculum;

(B) Provide coherent information about student attainment of such standards;

(C) Are used for purposes for which such assessments are valid, reliable, and unbiased, and are consistent with relevant nationally recognized professional and technical standards for such assessments;

(D) Involve multiple up-to-date measures of student performance, including measures that assess higher order thinking skills and understanding; and

(E) Provide for:

- (i) The participation in such assessments of all students;
- (ii) Individual student assessments for students that fail to reach minimum acceptable levels of performance;
- (iii) The reasonable adaptations and accommodations for students with special needs (as defined in paragraph (32) of this section) necessary to measure the achievement of such students relative to the District of Columbia's content standards; and
- (iv) The inclusion of limited-English proficient students, who shall be assessed, to the extent practicable, in the language and form most likely to yield accurate and reliable information regarding such students' knowledge and abilities.

(14) *Electronic data transfer system.* — The term “electronic data transfer system” means a computer-based process for the maintenance and transfer of student records designed to permit the transfer of individual student records among District of Columbia public schools and public charter schools.

(15) *Elementary school.* — The term “elementary school” means an institutional day or residential school that provides elementary education, as determined under District of Columbia law.

(16) *Eligible applicant.* — The term “eligible applicant” means a person, including a private, public, or quasi-public entity, or an institution of higher education (as defined in § 1201(a) of the Higher Education Act of 1965 (20 U.S.C. § 1141(a) [repealed]), that seeks to establish a public charter school in the District of Columbia.

(17) *Eligible chartering authority.* — The term “eligible chartering authority” means any of the following:

- (A) The Board of Education;
- (B) The Public Charter School Board; or
- (C) Any one entity designated as an eligible chartering authority by enactment of a bill by the District of Columbia Council after April 26, 1996.

(18) *Family resource center.* — The term “family resource center” means an information desk:

(A) Located in a District of Columbia public school or a public charter school serving a majority of students whose family income is not greater than 185 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with § 673(2) of the Community Services Block Grant Act applicable to a family of the size involved (42 U.S.C. § 9902(3)); and

(B) Which links students and families to local resources and public and private entities involved in child care, adult education, health and social services, tutoring, mentoring, and job training.

(19) *Individual career path.* — The term “individual career path” means a program of study that provides a secondary school student the skills necessary to compete in the 21st century workforce.

(20) *Literacy*. — The term “literacy” means:

(A) In the case of a minor student, such student’s ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function in society, to achieve such student’s goals, and develop such student’s knowledge and potential; and

(B) In the case of an adult, such adult’s ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve such adult’s goals, and develop such adult’s knowledge and potential.

(21) *Long-term reform plan*. — The term “long-term reform plan” means the plan submitted by the Superintendent under § 38-1801.01.

(22) *Mayor*. — The term “Mayor” means the Mayor of the District of Columbia.

(23) *Metrobus and Metrorail Transit System*. — The term “Metrobus and Metrorail Transit System” means the bus and rail systems administered by the Washington Metropolitan Area Transit Authority.

(24) *Minor student*. — The term “minor student” means an individual who:

(A) Is enrolled in a District of Columbia public school or a public charter school; and

(B) Is not beyond the age of compulsory school attendance, as prescribed in §§ 38-201 and 38-202.

(24A) *Nonprofit Corporation Act*. — The term “Nonprofit Corporation Act” means Chapter 4 of Title 29.

(25) *Nonresident student*. — The term “nonresident student” means:

(A) An individual under the age of 18 who is enrolled in a District of Columbia public school or a public charter school, and does not have a parent, guardian, custodian, or primary care giver, as determined pursuant to Chapter 3 of this title [§ 38-302 et seq.], residing in the District of Columbia; or

(B) An individual who is age 18 or older and is enrolled in a District of Columbia public school or public charter school, and does not reside in the District of Columbia.

(25A) *Office of the State Superintendent of Education or OSSE*. — The term “Office of the State Superintendent of Education” or “OSSE” means the Office of the State Superintendent of Education established by § 38-2601.

(26) *Parent*. — The term “parent” means a person who has custody of a child, and who:

(A) Is a natural parent of the child;

(B) Is a stepparent of the child;

(C) Has adopted the child; or

(D) Is appointed as a guardian for the child by a court of competent jurisdiction.

(27) *Petition*. — The term “petition” means a written application.

(28) *Promotion gate*. — The term “promotion gate” means the criteria, developed by the Superintendent and approved by the Board of Education, that are used to determine student promotion at different grade levels. Such criteria shall include student achievement on districtwide assessments established under subchapter III of this chapter.

(29) *Public charter school.* — The term “public charter school” means a publicly funded school in the District of Columbia that:

(A) Is established pursuant to subchapter II of this chapter; and

(B) Except as provided under §§ 38-1802.12(d)(5) and 38-1802.13(c)(5) is not a part of the District of Columbia public schools.

(30) *Public Charter School Board.* — The term “Public Charter School Board” means the Public Charter School Board established under § 38-1802.14.

(31) *Secondary school.* — The term “secondary school” means an institutional day or residential school that provides secondary education, as determined by District of Columbia law, except that such term does not include any education beyond grade 12.

(32) *Student with special needs.* — The term “student with special needs” means a student who is a child with a disability as provided in § 602(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. § 1401(a)(1)) or a student who is an individual with a disability as provided in § 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. § 706(8) [29 U.S.C. § 705(20)]).

(33) *Superintendent.* — The term “Superintendent” means the Superintendent of the District of Columbia public schools.

(34) *Teacher.* — The term “teacher” means any person employed as a teacher by the Board of Education or by a public charter school.

(Apr. 26, 1996, 110 Stat. 1321 226, Pub. L. 104-134, § 2002; Apr. 13, 2005, D.C. Law 15-348, § 102(a), 52 DCR 1991; Mar. 14, 2007, D.C. Law 16-268, § 4(a), 54 DCR 833; Sept. 18, 2007, D.C. Law 17-20, § 4032(a), 54 DCR 7052; July 2, 2011, D.C. Law 18-378, § 3(dd)(1), 58 DCR 1720.)

Cross references. — Disposition of certain school property, preference for public charter school, see § 47-392.25.

Prior Codifications. — 1981 Ed., § 31-2852.

Effect of amendments. — D.C. Law 15-348, in par. (25)(A), substituted “parent, guardian, custodian, or primary care giver, as determined pursuant to Chapter 3 of this title,” for “parent”.

D.C. Law 16-268 added par. (24A).

D.C. Law 17-20 added par. (25A).

D.C. Law 18-378, in par. (24A), substituted “Chapter 4 of Title 29” for “subchapter I of Chapter 3 of Title 29”.

Temporary Amendment of Section. — Section 3(a) of D.C. Laws 13-199 in subsec. (25)(A), substituted “parent, guardian or custodian” for “parent”.

Section 6(b) of D.C. Laws 13-427 provided that the act shall expire after 225 days of its having taken effect.

Section 3(a) of D.C. Law 14-38, in subsec. (25)(A) is amended by striking the word “parent” and inserting the phrase “parent, guardian or custodian” in its place.

Section 6(b) of D.C. Law 14-38 provided that

the act shall expire after 225 days of its having taken effect.

Section 3(a) of D.C. Law 15-67, in par. (25)(A), substituted “parent, guardian or custodian” for “parent”.

Section 6(b) of D.C. Law 15-67 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 3(a) of the Public School Enrollment Integrity Emergency Amendment Act of 2000 (D.C. Act 13-409, August 14, 2000, 47 DCR 7264).

For temporary (90 day) amendment of section, see § 3(a) of the Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-453, November 7, 2000, 47 DCR 9406).

For temporary (90 day) amendment of section, see § 3(a) of Public School Enrollment Integrity Emergency Amendment Act of 2001 (D.C. Act 14-86, July 9, 2001, 48 DCR 6373).

For temporary (90 day) amendment of section, see § 3(a) of Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-192, November 29, 2001, 48 DCR 11239).

For temporary (90 day) amendment of sec-

tion, see § 3(a) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2003 (D.C. Act 15-174, October 6, 2003, 50 DCR 9181).

For temporary (90 day) amendment of section, see § 3(a) of Public School Enrollment Integrity Clarification Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-282, December 18, 2003, 51 DCR 191).

For temporary (90 day) amendment of section, see § 3(a) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2004 (D.C. Act 15-519, August 2, 2004, 51 DCR 8995).

For temporary (90 day) amendment of section, see § 4032(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 14-38. — Law 14-38, the “Public School Enrollment Integrity Temporary Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-242, which was retained by Council. The Bill was adopted on first and second readings on June 5, 2001, and June 26, 2001, respectively. Signed by the Mayor on July 12, 2001, it was assigned Act No. 14-100 and transmitted to both Houses of Congress for its review. D.C. Law 14-38 became effective on October 13, 2001.

Legislative history of Law 15-67. — Law 15-67, the “Public School Enrollment Integrity Clarification Temporary Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-433, and was retained by Council. The Bill was adopted on first and second readings on September 16, 2003, and October 7,

2003, respectively. Signed by the Mayor on October 24, 2003, it was assigned Act No. 15-185 and transmitted to both Houses of Congress for its review. D.C. Law 15-67 became effective on February 6, 2004.

Legislative history of Law 15-348. — Law 15-348, the “Public School Enrollment Integrity Clarification and Board of Education Honoraria Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-411 which was referred to the Committee Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 22, 2005, it was assigned Act No. 15-742 and transmitted to both Houses of Congress for its review. D.C. Law 15-348 became effective on April 13, 2005.

Legislative history of Law 16-268. — For Law 16-268, see notes following § 38-1701.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 38-1202.08.

Short title. — Short title: Section 4031 of D.C. Law 17-20 provided that subtitle D of title IV of the act may be cited as the “Student Funding Formula Assessment, Educational Data Warehouse, and Enrollment Fund Establishment Amendment Act of 2007”.

References in text. — “Part F of title IV of the District of Columbia Home Rule Act,” referred to in (10)(A)(ii), is part F of title IV of the Act of December 24, 1973, 87 Stat. 774, Pub. L. 93-198 which is codified as §§ 1-204.61 through 1-204.66.

§ 38-1800.03. General effective date.

Except as otherwise provided in this chapter, this chapter shall be effective beginning on April 26, 1996.

(Apr. 26, 1996, 110 Stat. 1321 226, Pub. L. 104-134, § 2003; Nov. 29, 1999, 113 Stat. 1526, Pub. L. 106-113, § 155.)

Prior Codifications. — 1981 Ed., § 31-2851.

Effect of amendments. — Section 155 of Public Law 106-113 deleted “during the period” preceding and “and ending 5 years after such date” following “beginning on April 26, 1996”.

Editor’s notes. — Contracting Authority of District of Columbia Financial Responsibility and Management Assistance Authority: Section 5201 of Pub. L. 104-208, 110 Stat. 3009 1450, provided that:

“The District of Columbia Financial Responsibility and Management Assistance Authority (referred to in this section as the “Authority”) shall have the authority to contract with a private entity (or entities) to carry out a pro-

gram of school facility repair of public schools and public charter schools located in public school facilities in the District of Columbia, in consultation with the General Services Administration: Provided, That an amount estimated to be \$40,700,000 is hereby transferred and otherwise made available to the Authority until expended for contracting as provided under this section, to be derived from transfers and reallocations as follows: (1) funds made available under the heading “PUBLIC EDUCATION SYSTEM” in Public Law 104-194 for school repairs in a restricted line item; (2) all capital financing authority made available for public school capital improvements in Public Law 104-194; and (3) all capital financing authority

made available for public school capital improvements which are or remain available from Public Law 104-134 or any previous appropriations Act for the District of Columbia: Provided further, That the General Services Administration, in consultation with the District of Columbia Public Schools and the District of Columbia Council and subject to the approval of the Authority and the Committees on Appropriations of the Senate and the House of Rep-

resentatives, shall provide program management services to assist in the short-term management of the repairs and capital improvements: Provided further,.

"That contracting authorized under this section shall be conducted in accordance with Federal procurement rules and regulations and guidelines or such guidelines as prescribed by the Authority."

Subchapter I. District of Columbia Reform Plan.

§ 38-1801.01. Long-term reform plan.

(a) In General. —

(1) *Plan.* — The Superintendent, with the approval of the Board of Education, shall submit to the Mayor, the District of Columbia Council, the Authority, the Consensus Commission, and the appropriate congressional committees, a long-term reform plan, not later than 90 days after April 26, 1996, and each February 15 thereafter. The long-term reform plan shall be consistent with the financial plan and budget for the District of Columbia for fiscal year 1996, and each financial plan and budget for a subsequent fiscal year, as the case may be, required under § 47-392.01.

(2) Consultation. —

(A) *In general.* — In developing the long-term reform plan, the Superintendent:

(i) Shall consult with the Board of Education, the Mayor, the District of Columbia Council, the Authority, and the Consensus Commission; and

(ii) Shall afford the public, interested organizations, and groups an opportunity to present their views and make recommendations regarding the long-term reform plan.

(B) *Summary of recommendations.* — The Superintendent shall include in the long-term plan a summary of the recommendations made under subparagraph (A)(ii) of this paragraph and the response of the Superintendent to the recommendations.

(b) Contents. —

(1) *Areas to be addressed.* — The long-term reform plan shall describe how the District of Columbia public schools will become a world-class education system that prepares students for lifetime learning in the 21st century and which is on a par with the best education systems of other cities, States, and nations. The long-term reform plan shall include a description of how the District of Columbia public schools will accomplish the following:

(A) Achievement at nationally and internationally competitive levels by students attending District of Columbia public schools;

(B) The preparation of students for the workforce, including:

(i) Providing special emphasis for students planning to obtain a postsecondary education; and

(ii) The development of individual career paths;

(C) The improvement of the health and safety of students in District of Columbia public schools;

(D) Local school governance, decentralization, autonomy, and parental choice among District of Columbia public schools;

(E) The implementation of a comprehensive and effective adult education and literacy program;

(F) The identification, beginning in grade 3, of each student who does not meet minimum standards of academic achievement in reading, writing, and mathematics in order to ensure that such student meets such standards prior to grade promotion;

(G) The achievement of literacy, and the possession of the knowledge and skills necessary to think critically, communicate effectively, and perform competently on districtwide assessments, by students attending District of Columbia public schools prior to such student's completion of grade 8;

(H) The establishment of after-school programs that promote self-confidence, self-discipline, self-respect, good citizenship, and respect for leaders, through such activities as arts classes, physical fitness programs, and community service;

(I) Steps necessary to establish an electronic data transfer system;

(J) Encourage parental involvement in all school activities, particularly parent teacher conferences;

(K) Expired.

(L) The establishment of classes, beginning not later than grade 3, to teach students how to use computers effectively;

(M) The development of community schools that enable District of Columbia public schools to collaborate with other public and nonprofit agencies and organizations, local businesses, recreational, cultural, and other community and human service entities, for the purpose of meeting the needs and expanding the opportunities available to residents of the communities served by such schools;

(N) The establishment of programs which provide counseling, mentoring (especially peer mentoring), academic support, outreach, and supportive services to elementary, middle, and secondary school students who are at risk of dropping out of school;

(O) The establishment of a comprehensive remedial education program to assist students who do not meet basic literacy standards, or the criteria of promotion gates established in § 38-1803.21;

(P) The establishment of leadership development projects for middle school principals, which projects shall increase student learning and achievement and strengthen such principals as instructional school leaders;

(Q) The implementation of a policy for performance-based evaluation of principals and teachers, after consultation with the Superintendent and unions (including unions that represent teachers and unions that represent principals);

(R) The implementation of policies that require competitive appointments for all District of Columbia public school positions;

(S) The implementation of policies regarding alternative teacher certification requirements;

(T) The implementation of testing requirements for teacher licensing renewal;

(U) A review of the District of Columbia public school central office budget and staffing reductions for each fiscal year compared to the level of such budget and reductions at the end of fiscal year 1995; and

(V) The implementation of the discipline policy for the District of Columbia public schools in order to ensure a safe, disciplined environment conducive to learning.

(2) *Other information.* — For each of the items described in subparagraphs (A) through (V) of paragraph (1), the long-term reform plan shall include:

(A) A statement of measurable, objective performance goals;

(B) A description of the measures of performance to be used in determining whether the Superintendent and Board of Education have met the goals;

(C) Dates by which the goals shall be met;

(D) Plans for monitoring and reporting progress to District of Columbia residents, the Mayor, the District of Columbia Council, the Authority, the Consensus Commission, and the appropriate congressional committees regarding the carrying out of the long-term reform plan; and

(E) The title of the management employee of the District of Columbia public schools most directly responsible for the achievement of each goal and, with respect to each such employee, the title of the employee's immediate supervisor or superior.

(c) *Amendments.* — The Superintendent, with the approval of the Board of Education, shall submit any amendment to the long-term reform plan to the Mayor, the District of Columbia Council, the Authority, the Consensus Commission, and the appropriate congressional committees. Any amendment to the long-term reform plan shall be consistent with the financial plan and budget for fiscal year 1996, and each financial plan and budget for a subsequent fiscal year, as the case may be, for the District of Columbia required under § 47-392.01.

(Apr. 26, 1996, 110 Stat. 1321 231, Pub. L. 104-134, § 2101.)

Cross references. — Supervision of the adult education program, long-term reform plan, see § 38-1202.12.

Section references. — This section is referred to in §§ 38-1800.02 and 38-1808.54.

Prior Codifications. — 1981 Ed., § 31-2853.1.

Editor's notes. — See notes following § 38-1702.01.

§ 38-1801.02. Superintendent's report on reforms.

Not later than December 1, 1996, the Superintendent shall submit to the appropriate congressional committees, the Board of Education, the Mayor, the Consensus Commission, and the District of Columbia Council a report regarding the progress of the District of Columbia public schools toward achieving the goals of the long-term reform plan.

(Apr. 26, 1996, 110 Stat. 1321 234, Pub. L. 104-134, § 2102.)

Prior Codifications. — 1981 Ed., § 31-2853.2.

§ 38-1801.03. District of Columbia Council report.

Not later than April 1, 1997, the Chairperson of the District of Columbia Council shall submit to the appropriate congressional committees a report describing legislative and other actions the District of Columbia Council has taken or will take to facilitate the implementation of the goals of the long-term reform plan.

(Apr. 26, 1996, 110 Stat. 1321 234, Pub. L. 104-134, § 2103.)

Prior Codifications. — 1981 Ed., § 31-2853.3.

Subchapter II. Public Charter Schools.

§ 38-1802.01. Process for filing charter petitions.

(a) *Existing public school.* — An eligible applicant seeking to convert a District of Columbia public school into a public charter school:

(1) Shall prepare a petition to establish a public charter school that meets the requirements of § 38-1802.02;

(2) Shall provide a copy of the petition to:

- (A) The parents of minor students attending the existing school;
- (B) Adult students attending the existing school;
- (C) Employees of the existing school;
- (D) Parents of minor students who both attend:

(i) The school grade immediately lower than the first school grade which is served by the public school which is the subject of the conversion petition; and

(ii) A school that is located within the attendance zone of the public school which is the subject of the conversion petition.

(E) Each Advisory Neighborhood Commission which represents an area within the attendance area of the public school which is the subject of the conversion petition; and

(3) Shall file the petition with an eligible chartering authority for approval after the petition:

(A) Is signed by two-thirds of the sum of:

(i) The total number of parents of minor students attending the school; and

(ii) The total number of adult students attending the school; and

(B) Is endorsed by at least two-thirds of full-time teachers employed in the school.

(b) *Private or independent school.* — An eligible applicant seeking to convert an existing private or independent school in the District of Columbia into a public charter school:

(1) Shall prepare a petition to establish a public charter school that is

approved by the Board of Trustees or authority responsible for the school and that meets the requirements of § 38-1802.02;

(2) Shall provide a copy of the petition to:

- (A) The parents of minor students attending the existing school;
- (B) Adult students attending the existing school; and
- (C) Employees of the existing school; and

(3) Shall file the petition with an eligible chartering authority for approval after the petition:

(A) Is signed by two-thirds of the sum of:

(i) The total number of parents of minor students attending the school; and

(ii) The total number of adult students attending the school; and

(B) Is endorsed by at least two-thirds of full-time teachers employed in the school.

(c) *New school.* — An eligible applicant seeking to establish in the District of Columbia a public charter school, but not seeking to convert a District of Columbia public school or a private or independent school into a public charter school, shall file with an eligible chartering authority for approval a petition to establish a public charter school that meets the requirements of § 38-1802.02.

(d) *Limitations on filing.* —

(1) *Multiple chartering authorities.* — An eligible applicant may not file the same petition to establish a public charter school with more than one eligible chartering authority during a calendar year.

(2) *Multiple petitions.* — An eligible applicant may not file more than one petition to establish a public charter school during a calendar year.

(e) *Petition for public charter school is public.* — A petition to establish a public charter school in the District of Columbia, or to convert a District of Columbia public school or an existing private or independent school, is a public document.

(f) *Existing public charter schools.* — A public charter school that existed prior to June 12, 2007, and that was chartered by the District of Columbia Board of Education pursuant to Chapter 17 of this title [§ 38-1701.01 et seq.] [repealed], shall not be required to file a petition with the Public Charter School Board; it shall be considered approved and chartered for the purposes of this chapter and shall be subject to the powers and duties granted to the Public Charter School Board as an eligible chartering authority pursuant to §§ 38-1802.11, 38-1802.12, and 38-1802.13.

(Apr. 26, 1996, 110 Stat. 1321 234, Pub. L. 104-134, § 2201; Sept. 30, 1996, 110 Stat. 3009 1461, Pub. L. 104-208, § 5205(a); Oct. 19, 2000, D.C. Law 13-172, § 2503(a), 47 DCR 6308; Oct. 18, 2004, 118 Stat. 1348, Pub. L. 108-335, §§ 341, 342(a); Dec. 8, 2004, 118 Stat. 3342, Pub. L. 108-447, Div. J., title I, § 103(a)(3); June 12, 2007, D.C. Law 17-9, § 802(a), 54 DCR 4102.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.11.

Effect of amendments. — D.C. Law 13-172 added subsec. (a)(2) (D) and (E).

Pub. L. 108-335 added subsec. (e).

Pub. L. 108-447 deleted amendments of subsecs. (a)(3)(B) and (b)(3)(B) by Pub. L. 108-

335, § 342(a). See Editor's Notes.

D.C. Law 17-9 added subsec. (f).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2503(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2503(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 4032(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) repeal of section 804 of D.C. Law 17-9, see § 4043(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Effective date. — Section 103(b) of Div. J, title I, of Pub. L. 108-447, provided: "The amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 Pub. L. 108-335".

Editor's notes. — The amendment of subsecs. (a)(3)(B) and (b)(3)(B) by Pub. L. 108-335, § 342(a), was deleted by Pub. L. 108-447, Div. J, title I, § 103(a)(3), and did not take effect. See Effective Dates note.

Applicability: Section 804 of D.C. Law 17-9 provided that section 802 shall apply upon enactment by Congress. Section 804 of D.C. Law 17-9 was repealed by section 4043(b) of D.C. Law 17-20.

§ 38-1802.02. Contents of petition.

A petition under § 38-1802.01 to establish a public charter school shall include the following:

(1) A statement defining the mission and goals of the proposed school and the manner in which the school will conduct any districtwide assessments;

(2) A statement of the need for the proposed school in the geographic area of the school site;

(3) A description of the proposed instructional goals and methods for the proposed school, which shall include, at a minimum:

(A) The area of focus of the proposed school, such as mathematics, science, or the arts, if the school will have such a focus;

(B) The methods that will be used, including classroom technology, to provide students with the knowledge, proficiency, and skills needed:

(i) To become nationally and internationally competitive students and educated individuals in the 21st century; and

(ii) To perform competitively on any districtwide assessments; and

(C) The methods that will be used to improve student self-motivation, classroom instruction, and learning for all students;

(4) A description of the scope and size of the proposed school's program that will enable students to successfully achieve the goals established by the school, including the grade levels to be served by the school and the projected and maximum enrollment of each grade level;

(5) A description of the plan for evaluating student academic achievement at the proposed school and the procedures for remedial action that will be used by the school when the academic achievement of a student falls below the expectations of the school;

(6) An operating budget for the first 2 years of the proposed school that is based on anticipated enrollment and contains:

(A) A description of the method for conducting annual audits of the financial, administrative, and programmatic operations of the school;

(B) Either:

(i) An identification of the site where the school will be located, including a description of any buildings on the site and any buildings proposed to be constructed on the site; or

(I) An identification of a facility for the school, including a description of the site where the school will be located, any buildings on the site, and any buildings proposed to be constructed on the site; and

(II) Information demonstrating that the eligible applicant has acquired title to, or otherwise secured the use of, the facility; or

(ii) A timetable by which an identification described in subsubparagraph (i)(I) of this subparagraph will be made, and the information described in subsubparagraph (i)(II) of this subparagraph will be submitted, to the eligible chartering authority;

(C) A description of any major contracts planned, with a value equal to or exceeding \$10,000, for equipment and services, leases, improvements, purchases of real property, or insurance; and

(D) A timetable for commencing operations as a public charter school;

(7) A description of the proposed rules and policies for governance and operation of the proposed school;

(8) Copies of the proposed articles of incorporation and bylaws of the proposed school, which shall include provisions governing the distribution of the corporation's assets upon dissolution that comply with the requirements of § 38-1802.13a;

(9) The names and addresses of the members of the proposed Board of Trustees and the procedures for selecting trustees;

(10) A description of the student enrollment, admission, suspension, expulsion, and other disciplinary policies and procedures of the proposed school, and the criteria for making decisions in such areas;

(11) A description of the procedures the proposed school plans to follow to ensure the health and safety of students, employees, and guests of the school and to comply with applicable health and safety laws, and all applicable civil rights statutes and regulations of the Federal Government and the District of Columbia;

(12) An explanation of the qualifications that will be required of employees of the proposed school;

(13) An identification, and a description, of the individuals and entities submitting the petition, including their names and addresses, and the names of the organizations or corporations of which such individuals are directors or officers;

(14) A description of how parents, teachers, and other members of the community have been involved in the design and will continue to be involved in the implementation of the proposed school;

(15) A description of how parents and teachers will be provided an

orientation and other training to ensure their effective participation in the operation of the public charter school;

(16) An assurance the proposed school will seek, obtain, and maintain accreditation from at least one of the following:

- (A) The Middle States Association of Colleges and Schools;
- (B) The Association of Independent Maryland Schools;
- (C) The Southern Association of Colleges and Schools;
- (D) The Virginia Association of Independent Schools;
- (E) American Montessori Internationale;
- (F) The American Montessori Society;
- (G) The National Academy of Early Childhood Programs; or
- (H) Any other accrediting body deemed appropriate by the eligible chartering authority that granted the charter to the school;

(17) Repealed;

(18) An explanation of the relationship that will exist between the public charter school and the school's employees; and

(19) A statement of whether the proposed school elects to be treated as a local educational agency or a District of Columbia public school for purposes of Part B of the Individuals With Disabilities Education Act (20 U.S.C. 1411 et seq.) and § 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and notwithstanding any other provision of law the eligible chartering authority shall not have the authority to approve or disapprove such election.

(Apr. 26, 1996, 110 Stat. 1321 235, Pub. L. 104-134, § 2202; Sept. 30, 1996, 110 Stat. 3009 1461, Pub. L. 104-208, § 5205(b); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-552, § 120(c)(2)(A); Mar. 14, 2007, D.C. Law 16-268, § 4(b), 54 DCR 833.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.01, and 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.12.

Effect of amendments. — Section 120 (c)(2)(A) of Public Law 106-522 deleted provisions contained in par. (17) which formerly provided: "(17) In the case that the proposed school's educational program includes pre-school or prekindergarten, an assurance the

proposed school will be licensed as a child development center by the District of Columbia Government not later than the first date on which such program commences;"

D.C. Law 16-268, in par. (8), inserted "which shall include provisions governing the distribution of the corporation's assets upon dissolution that comply with the requirements of § 38-1802.13a" following "and bylaws of the proposed school".

Legislative history of Law 16-268. — For Law 16-268, see notes following § 38-1701.01.

§ 38-1802.03. Process for approving or denying public charter school petitions.

(a) *Schedule.* — An eligible chartering authority shall establish a schedule for receiving petitions to establish a public charter school and shall publish any such schedule in the District of Columbia Register and newspapers of general circulation.

(b) *Public hearing.* — Not later than 45 days after a petition to establish a public charter school is filed with an eligible chartering authority, the eligible chartering authority shall hold a public hearing on the petition to gather the

information that is necessary for the eligible chartering authority to make the decision to approve or deny the petition.

(c) *Notice.* — Not later than 10 days prior to the scheduled date of a public hearing on a petition to establish a public charter school, an eligible chartering authority:

(1) Shall publish a notice of the hearing in the District of Columbia Register and newspapers of general circulation;

(2) Shall send a written notification of the hearing date to the eligible applicant who filed the petition;

(3) Shall send written notification of the hearing date to the Advisory Neighborhood Commission in the area in which the school is located; and

(4) Shall send written notification of the hearing date to the following parties when the petition is to convert an existing public school into a public charter school:

(A) Parents of minor students attending the public school which is the subject of the conversion petition;

(B) Adult students attending the public school which is the subject of the conversion petition;

(C) Employees of the public school which is the subject of the conversion petition; and

(D) Parents of minor students who both attend:

(i) The school grade immediately lower than the first school grade which is served by the public school which is the subject of the conversion petition; and

(ii) A school that is located within the attendance zone of the public school which is the subject of the conversion petition.

(d) *Approval.* —

(1) *In general.* — Subject to subsection (i) of this section and paragraph (2) of this subsection an eligible chartering authority shall approve a petition to establish a public charter school, if:

(A) The eligible chartering authority determines that the petition satisfies the requirements of this subchapter;

(B) The eligible applicant who filed the petition agrees to satisfy any condition or requirement, consistent with this subchapter and other applicable law, that is set forth in writing by the eligible chartering authority as an amendment to the petition;

(C) The eligible chartering authority determines that the public charter school has the ability to meet the educational objectives outlined in the petition; and

(D) The approval will not cause the eligible chartering authority to exceed a limit under subsection (i) of this section.

(2) *Conditional approval.* —

(A) *In general.* — In the case of a petition that does not contain the identification and information required under § 38-1802.02(6)(B)(i), but does contain the timetable required under § 38-1802.02(6)(B)(ii), an eligible chartering authority may only approve the petition on a conditional basis, subject to the eligible applicant's submitting the identification and information de-

scribed in § 38-1802.02(6)(B)(i) in accordance with such timetable, or any other timetable specified in writing by the eligible chartering authority in an amendment to the petition.

(B) *Effect of conditional approval.* — For purposes of subsections (e), (h), (i), and (j) of this section, a petition conditionally approved under this paragraph shall be treated the same as a petition approved under paragraph (1) of this subsection except that on the date that such a conditionally approved petition ceases to be conditionally approved because the eligible applicant has not timely submitted the identification and information described in § 38-1802.02(6)(B)(i), the approval of the petition shall cease to be counted for purposes of subsection (i) of this section.

(e) *Timetable.* — An eligible chartering authority shall approve or deny a petition to establish a public charter school not later than 45 days after the conclusion of the public hearing on the petition.

(f) *Extension.* — An eligible chartering authority and an eligible applicant may agree to extend the 45-day time period referred to in subsection (e) of this section by a period that shall not exceed 30 days.

(g) *Denial explanation.* — If an eligible chartering authority denies a petition or finds the petition to be incomplete, the eligible chartering authority shall specify in writing the reasons for its decision and indicate, when the eligible chartering authority determines appropriate, how the eligible applicant who filed the petition may revise the petition to satisfy the requirements for approval.

(h) *Approved petition.* —

(1) *Notice.* — Not later than 10 days after an eligible chartering authority approves a petition to establish a public charter school, the eligible chartering authority shall provide a written notice of the approval, including a copy of the approved petition and any conditions or requirements agreed to under subsection (d) of this section, to the eligible applicant and to the Chief Financial Officer of the District of Columbia. The eligible chartering authority shall publish a notice of the approval of the petition in the District of Columbia Register and newspapers of general circulation.

(2) *Charter.* — The provisions described in paragraphs (1), (7), (8), (11), (16), and (18) of § 38-1802.02 of a petition to establish a public charter school that are approved by an eligible chartering authority, together with any amendments to such provisions in the petition containing conditions or requirements agreed to by the eligible applicant under subsection (d) of this section, shall be considered a charter granted to the school by the eligible chartering authority.

(i) *Number of petitions.* —

(1) *First year.* — During calendar year 1996, not more than 10 petitions to establish public charter schools may be approved under this subchapter.

(2) *Subsequent years.* —

(A) *In general.* —

(i) *Annual limit.* — Subject to subparagraph (B) of this paragraph and sub-subparagraph (ii) of this subparagraph, during calendar year 1997, and during each subsequent calendar year, each eligible chartering authority

shall not approve more than 10 petitions to establish a public charter school under this subchapter.

(ii) *Timetable.* — Any petition approved under sub-subparagraph (i) of this subparagraph shall be approved during an application approval period that terminates on April 1 of each year. Such an approval period may commence before or after January 1 of the calendar year in which it terminates, except that any petition approved at any time during such an approval period shall count, for purposes of sub-subparagraph (i) of this subparagraph, against the total number of petitions approved during the calendar year in which the approval period terminates.

(B) *Exception.* — If, by April 1 of any calendar year after 1996, an eligible chartering authority has approved fewer than 10 petitions during such calendar year, any other eligible chartering authority may approve more than 10 petitions during such calendar year, but only if:

(i) The eligible chartering authority completes the approval of any such additional petition before June 1 of the year; and

(ii) The approval of any such additional petition will not cause the total number of petitions approved by all eligible chartering authorities during the calendar year to exceed 20.

(j) *Authority of eligible chartering authority.* —

(1) *In general.* — Except as provided in paragraph (2) of this subsection, and except for officers or employees of the eligible chartering authority with which a petition to establish a public charter school is filed, no governmental entity, elected official, or employee of the District of Columbia shall make, participate in making, or intervene in the making of, the decision to approve or deny such a petition.

(2) *Availability of review.* — A decision by an eligible chartering authority to deny a petition to establish a public charter school shall be subject to judicial review by an appropriate court of the District of Columbia or by the Office of the State Superintendent of Education. In the case of review by the Office of the State Superintendent of Education, the Office of the State Superintendent of Education shall issue procedures for the submission and review of appeals.

(Apr. 26, 1996, 110 Stat. 1321-237, Pub. L. 104-134, § 2203; Sept. 30, 1996, 110 Stat. 3009-1462, Pub. L. 104-208, § 5205(c); Nov. 19, 1997, 111 Stat. 2190, Pub. L. 105-100, § 167; Oct. 19, 2000, D.C. Law 13-172, § 2503(b), 47 DCR 6308; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-552, § 120(c)(2)(B); June 12, 2007, D.C. Law 17-9, § 802(b), 54 DCR 4102.)

Cross references. — Disposition of certain school property, preference for public charter school, see § 47-392.25.

Section references. — This section is referred to in §§ 38-1800.02 and 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.09, 38-1802.11, 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.13.

Effect of amendments. — Section 120 (c)(2)(B) of Public Law 106-522 deleted refer-

ence to par. (17) in the enumeration at the beginning of subsec. (h)(2).

D.C. Law 13-172 added subsec. (c) (3) and (4).

D.C. Law 17-9, in subsec. (j)(2), substituted “of Columbia or by the Office of the State Superintendent of Education. In the case of review by the Office of the State Superintendent of Education, the Office of the State Superintendent of Education shall issue procedures for the submission and review of appeals.” for “of Columbia.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 2503(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) repeal of section 804 of D.C. Law 17-9, see § 4043(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 38-1802.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Editor's notes. — Applicability: Section 804 of D.C. Law 17-9 provided that section 802 shall apply upon enactment by Congress. Section 804 of D.C. Law 17-9 was repealed by section 4043(b) of D.C. Law 17-20.

§ 38-1802.04. Duties, powers, and other requirements, of public charter schools.

(a) *Duties.* — A public charter school shall comply with all of the terms and provisions of its charter.

(b) *Powers.* — A public charter school shall have the following powers:

(1) To adopt a name and corporate seal, but only if the name selected includes the words “public charter school”;

(2) To acquire real property for use as the public charter school’s facilities, from public or private sources;

(3) To receive and disburse funds for public charter school purposes;

(4) Subject to subsection (c)(1) of this section, to secure appropriate insurance and to make contracts and leases, including agreements to procure or purchase services, equipment, and supplies;

(5) To incur debt in reasonable anticipation of the receipt of funds from the general fund of the District of Columbia or the receipt of Federal or private funds;

(6) To solicit and accept any grants or gifts for public charter school purposes, if the public charter school:

(A) Does not accept any grants or gifts subject to any condition contrary to law or contrary to its charter; and

(B) Maintains for financial reporting purposes separate accounts for grants or gifts;

(7) To be responsible for the public charter school’s operation, including preparation of a budget and personnel matters; and

(8) To sue and be sued in the public charter school’s own name.

(b-1) *Limitation on powers.* — Each power conferred upon a public charter school under subsection (b) of this section can only be used for the sole purpose of operating the public charter school.

(c) *Prohibitions and other requirements.* —

(1) *Contracting authority.* —

(A) *Notice requirement for procurement contracts.* —

(i) *In general.* — Except in the case of an emergency (as determined by the eligible chartering authority of a public charter school), with respect to any procurement contract proposed to be awarded by the public charter school and having a value equal to or exceeding \$25,000, the school shall publish a notice of a request for proposals in the District of Columbia Register and newspapers of general circulation not less than 7 days prior to the award of the contract.

(ii) *Exception for certain contracts.* — The notice requirement of sub-subparagraph (i) of this subparagraph shall not apply with respect to any contract for the lease or purchase of real property by a public charter school, any employment contract for a staff member of a public charter school, or any management contract entered into by a public charter school and the management company designated in its charter or its petition for a revised charter.

(B) *Submission to the eligible chartering authority.* —

(i) *Deadline for submission.* — With respect to any contract described in subparagraph (A) of this paragraph that is awarded by a public charter school, the school shall submit to the eligible chartering authority, not later than 3 days after the date on which the award is made, all bids for the contract received by the school, the name of the contractor who is awarded the contract, and the rationale for the award of the contract.

(ii) *Effective date of contract.* — A contract described in subparagraph (A) of this paragraph shall become effective on the date that is 10 days after the date the school makes the submission under sub-subparagraph (i) of this subparagraph with respect to the contract, or the effective date specified in the contract, whichever is later.

(2) *Tuition, fees, and payments.* —

(A) *Prohibition.* — A public charter school may not, with respect to any student other than a nonresident student, charge tuition, impose fees, or otherwise require payment for participation in any program, educational offering, or activity that:

(i) Enrolls students in any grade from kindergarten through grade 12; or

(ii) Is funded in whole or part through an annual local appropriation.

(B) *Exception.* — A public charter school may impose fees or otherwise require payment, at rates established by the Board of Trustees of the school, for any program, educational offering, or activity not described in subsubparagraph (i) or (ii) of subparagraph (A), including adult education programs, or for field trips or similar activities.

(3) *Control.* — A public charter school:

(A) Shall exercise exclusive control over its expenditures, administration, personnel, and instructional methods, within the limitations imposed in this subchapter; and

(B) Shall be exempt from District of Columbia statutes, policies, rules, and regulations established for the District of Columbia public schools by the Superintendent, Board of Education, Mayor, District of Columbia Council, or Authority, except as otherwise provided in the school's charter or this subchapter.

(4) *Health and safety.* —

(A) A public charter school shall maintain the health and safety of all students attending such school.

(B) A public charter school shall submit, before September 16 of each year, a report to the chartering authority and, in a control year to the Authority a report that documents that the charter school's facilities comply with the applicable health and safety laws and regulations of the federal government

and the District of Columbia, including the District of Columbia Fire Prevention Code. The report shall be open to public inspection and available upon request.

(5) *Civil rights and idea.* — The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), § 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), shall apply to a public charter school.

(6) *Governance.* — A public charter school shall be governed by a Board of Trustees in a manner consistent with the charter granted to the school and the provisions of this subchapter.

(7) *Other staff.* — No employee of the District of Columbia public schools may be required to accept employment with, or be assigned to, a public charter school.

(8) *Other students.* — No student enrolled in a District of Columbia public school, may be required to attend a public charter school; provided, that this paragraph shall not apply to students with special needs.

(9) *Taxes or bonds.* — A public charter school shall not levy taxes or issue bonds.

(10) *Charter revision.* — A public charter school seeking to revise its charter shall prepare a petition for approval of the revision and file the petition with the eligible chartering authority that granted the charter. The provisions of § 38-1802.03 shall apply to such a petition in the same manner as such provisions apply to a petition to establish a public charter school.

(11) *Annual report.* —

(A) *In general.* — A public charter school shall submit an annual report to the eligible chartering authority that approved its charter. The school shall permit a member of the public to review any such report upon request.

(B) *Contents.* — A report submitted under subparagraph (A) of this paragraph shall include the following data:

(i) A report on the extent to which the school is meeting its mission and goals as stated in the petition for the charter school;

(ii) Student performance on any districtwide assessments;

(iii) Grade advancement for students enrolled in the public charter school;

(iv) Graduation rates, college admission test scores, and college admission rates, if applicable;

(v) Types and amounts of parental involvement;

(vi) Official student enrollment;

(vii) Average daily attendance;

(viii) Average daily membership;

(ix) For the fiscal year 2005 annual financial audit and subsequent fiscal year annual financial audits, a financial statement audited by an independent certified public accountant or accounting firm, who, notwithstanding any other provision of this chapter, shall be selected from an

approved list developed by a committee of 2 representatives each from the District of Columbia Public Charter School Board, the District of Columbia Board of Education Charter School Board, and the District of Columbia Chief Financial Officer, in accordance with Government auditing standards for financial audits issued by the Comptroller General of the United States, pursuant to the April 8, 2005 memorandum of understanding between the District of Columbia Chartering Authorities and the District of Columbia Chief Financial Officer, as amended;

(x) A report on school staff indicating the qualifications and responsibilities of such staff; and

(xi) A list of all donors and grantors that have contributed monetary or in-kind donations having a value equal to or exceeding \$500 during the year that is the subject of the report.

(C) *Nonidentifying data.* — Data described in sub-subparagraphs (i) through (ix) of subparagraph (B) of this paragraph that are included in an annual report shall not identify the individuals to whom the data pertain.

(12) *Census.* — A public charter school shall provide to the Board of Education student enrollment data necessary for the Board of Education to comply with § 38-204.

(13) *Complaint resolution process.* — A public charter school shall establish an informal complaint resolution process.

(14) *Program of education.* — A public charter school shall provide a program of education which shall include one or more of the following:

(A) Preschool;

(B) Prekindergarten;

(C) Any grade or grades from kindergarten through grade 12;

(D) Residential education; or

(E) Adult, community, continuing, and vocational education programs.

(15) *Nonsectarian nature of schools.* — A public charter school shall be nonsectarian and shall not be affiliated with a sectarian school or religious institution.

(16) *Nonprofit status of school.* — A public charter school shall be organized under Chapter 4 of Title 29 and its sole purpose shall be the operation of the public charter school.

(17) *Immunity from civil liability.* —

(A) *In general.* — A public charter school, and its incorporators, Board of Trustees, officers, employees, and volunteers, shall be immune from civil liability, both personally and professionally, for any act or omission within the scope of their official duties unless the act or omission:

(i) Constitutes gross negligence;

(ii) Constitutes an intentional tort; or

(iii) Is criminal in nature.

(B) *Common law immunity preserved.* — Subparagraph (A) of this paragraph shall not be construed to abrogate any immunity under common law of a person described in such subparagraph.

(18) *Licensing as child development center.* — A public charter school which offers a preschool or prekindergarten program shall be subject to the

same child care licensing requirements (if any) which apply to a District of Columbia public school which offers such a program.

(19) *Participation in education data warehouse.* — A public charter school shall participate in the longitudinal education data warehouse system established by the Office of the State Superintendent of Education and shall provide data to the OSSE upon request.

(20) *Cooperation with the Office of Ombudsman for Public Education.* — A public charter school shall cooperate with the Office of Ombudsman for Public Education and shall comply with the disclosure protections of Chapter 3A of this title [§ 38-351 et seq.].

(21) *Distribution of funds.* — Funds that have not been provided for in an approved financial plan shall not be distributed to any public charter school.

(Apr. 26, 1996, 110 Stat. 1321 [238], Pub. L. 104-134, § 2204; Sept. 9, 1996, 110 Stat. 2356 [2376], Pub. L. 104-194, § 145; Oct. 19, 2000, D.C. Law 13-172, §§ 2803 and 2812, 47 DCR 6308; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 120(a), (c)(1); Oct. 20, 2005, D.C. Law 16-33, § 4013, 52 DCR 7503; Mar. 14, 2007, D.C. Law 16-268, § 4(c), 54 DCR 833; June 12, 2007, D.C. Law 17-9, § 802(c), 54 DCR 4102; Sept. 18, 2007, D.C. Law 17-20, § 4032(b), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 4023, 55 DCR 7598; July 2, 2011, D.C. Law 18-378, § 3(dd)(2), 58 DCR 1720.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.05, 38-1802.11, 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.14.

Effect of amendments. — Section 120 (a) of Public Law 106-522 substituted for “authority” the words “eligible chartering authority” in the heading to subsec. (c)(1)(B) and cl. (i) thereunder; and rewrote subsec. (c)(1)(A) and (c)(1)(B)(ii).

Emergency legislation. — For temporary (90-day) amendment of section, see §§ 2803 and 2812 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 2803 and 2812 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 4013 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 4032(c) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) repeal of section 804 of D.C. Law 17-9, see § 4043(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment, see § 4023 of Fiscal Year 2009 Budget Support

Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 38-1802.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 16-268. — For Law 16-268, see notes following § 38-1701.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Legislative history of Law 18-378. — For history of Law 18-378, see notes under § 38-1202.08.

Short title. — Short title: Section 4022 of D.C. Law 17-219 provided that subtitle K of title IV of the act may be cited as the “Public Charter School Board Fiscal Responsibility Amendment Act of 2008”.

Editor’s notes. — Section 133 of Pub. L. 109-115, Nov. 30, 2005, 119 Stat. 2522, provided: “Section 4013 of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Amendment Act of 2005, passed on first reading on May 10, 2005 (engrossed version of Bill 16-200) D.C. Law 16-33, § 4013, is hereby enacted into law.”

Applicability: Section 804 of D.C. Law 17-9 provided that section 802 shall apply upon enactment by Congress. Section 804 of D.C. Law 17-9 was repealed by section 4043(b) of D.C. Law 17-20.

§ 38-1802.05. Board of Trustees of a public charter school.

(a) *Board of Trustees.* — The members of a Board of Trustees of a public charter school shall be elected or selected pursuant to the charter granted to the school. Such Board of Trustees shall have an odd number of members that does not exceed 15, of which:

- (1) A majority shall be residents of the District of Columbia; and
- (2) At least 2 shall be parents of a student attending the school.

(b) *Eligibility.* — An individual is eligible for election or selection to the Board of Trustees of a public charter school if the person:

- (1) Is a teacher or staff member who is employed at the school;
- (2) Is a parent of a student attending the school; or
- (3) Meets the election or selection criteria set forth in the charter granted to the school.

(c) *Election or selection of parents.* — In the case of the first Board of Trustees of a public charter school to be elected or selected after the date on which the school is granted a charter, the election or selection of the members under subsection (a)(2) of this section shall occur on the earliest practicable date after classes at the school have commenced. Until such date, any other members who have been elected or selected shall serve as an interim Board of Trustees. Such an interim Board of Trustees may exercise all of the powers, and shall be subject to all of the duties, of a Board of Trustees.

(d) *Fiduciaries.* — The Board of Trustees of a public charter school shall be fiduciaries of the school and shall set overall policy for the school. The Board of Trustees may make final decisions on matters related to the operation of the school, consistent with the charter granted to the school, this subchapter, and other applicable law.

(Apr. 26, 1996, 110 Stat. 1321 [241], Pub. L. 104-134, § 2205; Nov. 19, 1997, 111 Stat. 2191, Pub. L. 105-100, § 168.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.11, 38-1802.14. **Prior Codifications.** — 1981 Ed., § 31-2853.15.

§ 38-1802.06. Student admission, enrollment, and withdrawal.

(a) *Open enrollment.* — Enrollment in a public charter school shall be open to all students who are residents of the District of Columbia and, if space is available, to nonresident students who meet the tuition requirement in subsection (e) of this section.

(b) *Criteria for admission.* — A public charter school may not limit enrollment on the basis of a student's race, color, religion, national origin, language spoken, intellectual or athletic ability, measures of achievement or aptitude, or status as a student with special needs. A public charter school may limit enrollment to specific grade levels.

(c) *Random selection.* — If there are more applications to enroll in a public charter school from students who are residents of the District of Columbia than

there are spaces available, students shall be admitted using a random selection process, except that a preference in admission may be given to an applicant who is a sibling of a student already attending or selected for admission to the public charter school in which the applicant is seeking enrollment, or an applicant who is a child of a member of the public charter school's founding board, so long as enrollment of founders' children is limited to no more than 10% of the school's total enrollment or to 20 students, whichever is less.

(d)(1) *Admission to an existing school.* — A District of Columbia public school that has been approved to be converted to a charter school under § 38-1802.01 shall give priority in enrollment to:

(A) Students enrolled in the school at the time the petition is granted;

(B) The siblings of students described in subparagraph (A) of this paragraph; and

(C) Students who reside within the attendance boundaries, if any, in which the school is located.

(2) A private or independent school that has been approved to be converted to a charter school under § 38-1802.01 may give priority in enrollment to the persons described in paragraph (1)(A) and (1)(B) of this subsection for a period of 5 years, beginning on the date its petition is approved.

(e) *Nonresident students.* — Nonresident students shall pay tuition to attend a public charter school at the applicable rate established for District of Columbia public schools administered by the Board of Education for the type of program in which the student is enrolled.

(f) *Student withdrawal.* — A student may withdraw from a public charter school at any time and, if otherwise eligible, enroll in a District of Columbia public school administered by the Board of Education.

(g) *Expulsion and suspension.* — The principal of a public charter school may expel or suspend a student from the school based on criteria set forth in the charter granted to the school.

(Apr. 26, 1996, 110 Stat. 1321 [242], Pub. L. 104-134, § 2206; Nov. 29, 1999, 113 Stat. 1526, Pub. L. 106-113, § 156; Oct. 19, 2000, D.C. Law 13-172, § 2503(c), 47 DCR 6308; Mar. 14, 2007, D.C. Law 16-268, § 4(d), 54 DCR 833.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.16.

Effect of amendments. — Section 156 of Public Law 106-113 added at the end of subsec. (c) “, except that a preference in admission may be given to an applicant who is a sibling of a student already attending or selected for admission to the public charter school in which the applicant is seeking enrollment.”

Section 2503(c) of D.C. Law 13-172 amended subsection (d)(1).

D.C. Law 16-268, in subsec. (c), inserted “or to an applicant who is a child of a member of the public charter school's founding board, so

long as enrollment of founders' children is limited to no more than 10% of the school's total enrollment or to 20 students, whichever is less” following “in which the applicant is seeking enrollment”.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2503(c) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2503(c) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 38-1802.01.

Legislative history of Law 16-268. — For Law 16-268, see notes following § 38-1701.01.

§ 38-1802.07. Employees.

(a) *Extended leave of absence without pay.* —

(1) *Leave of absence from District of Columbia public schools.* — The Superintendent shall grant, upon request, an extended leave of absence, without pay, to an employee of the District of Columbia public schools for the purpose of permitting the employee to accept a position at a public charter school for a 2-year term.

(2) *Request for extension.* — At the end of a 2-year term referred to in paragraph (1) of this subsection, an employee granted an extended leave of absence without pay under such paragraph may submit a request to the Superintendent for an extension of the leave of absence for an unlimited number of 2-year terms. The Superintendent may not unreasonably (as determined by the eligible chartering authority) withhold approval of the request.

(3) *Rights upon termination of leave.* — An employee granted an extended leave of absence without pay for the purpose described in paragraph (1) or (2) of this subsection shall have the same rights and benefits under law upon termination of such leave of absence as an employee of the District of Columbia public schools who is granted an extended leave of absence without pay for any other purpose.

(b) *Retirement System.* —

(1) *Creditable service.* — An employee of a public charter school who has received a leave of absence under subsection (a) of this section shall receive creditable service, as defined in § 1-626.04 and the rules established under such section, for the period of the employee's employment at the public charter school.

(2) *Authority to establish separate system.* — A public charter school may establish a retirement system for employees under its authority.

(3) *Election of retirement system.* — A former employee of the District of Columbia public schools who becomes an employee of a public charter school within 60 days after the date the employee's employment with the District of Columbia public schools is terminated may, at the time the employee commences employment with the public charter school, elect:

(A) To remain in a District of Columbia Government retirement system and continue to receive creditable service for the period of their employment at a public charter school; or

(B) To transfer into a retirement system established by the public charter school pursuant to paragraph (2) of this subsection.

(4) *Prohibited employment conditions.* — No public charter school may require a former employee of the District of Columbia public schools to transfer to the public charter school's retirement system as a condition of employment.

(5) *Contributions.* —

(A) *Employees electing not to transfer.* — In the case of a former employee of the District of Columbia public school who elects to remain in a

District of Columbia Government retirement system pursuant to paragraph (3)(A) of this subsection the public charter school that employs the person shall make the same contribution to such system on behalf of the person as the District of Columbia would have been required to make if the person had continued to be an employee of the District of Columbia public schools.

(B) *Employees electing to transfer.* — In the case of a former employee of the District of Columbia public schools who elects to transfer into a retirement system of a public charter school pursuant to paragraph (3)(B) of this subsection, the applicable District of Columbia Government retirement system from which the former employee is transferring shall compute the employee's contribution to that system and transfer this amount, to the retirement system of the public charter school.

(c) *Employment status.* — Notwithstanding any other provision of law and except as provided in this section, an employee of a public charter school shall not be considered to be an employee of the District of Columbia Government for any purpose.

(d) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within a public charter school unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit 8 proofs of residency upon employment in the manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel of the public charter school for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The public charter school shall submit to the Board annual reports detailing the names of all new employees and their pay schedules, titles, and place of resident.

(Apr. 26, 1996, 110 Stat. 1321 243, Pub. L. 104-134, § 2207; Oct. 18, 2004, 118 Stat. 1349, Pub. L. 108-335, § 342(b); Dec. 8, 2004, 118 Stat. 3342, Pub. L. 108-447, Div. J., title I, § 103(a)(3); Feb. 6, 2008, D.C. Law 17-108, § 214(a), 54 DCR 10993.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.17.

Effect of amendments. — Pub. L. 108-447 deleted the addition of subsec. (d) by Pub. L. 108-335. See Editor's Notes.

D.C. Law 17-108 added subsec. (d).

Legislative history of Law 17-108. — Law 17-108, the "Jobs for D.C. Residents Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-185 which was referred to the Committee on Workforce Development and Government Operations. The Bill

was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 26, 2007, it was assigned Act No. 17-172 and transmitted to both Houses of Congress for its review. D.C. Law 17-108 became effective on February 6, 2008.

Effective date. — Section 103(b) of Div. J, title I, of Pub. L. 108-447, provided: "The amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335]".

Editor's notes. — The addition of subsec. (e) by Pub. L. 108-335, § 342(b), was deleted by

Pub. L. 108-447, Div. J, title I, § 103(a)(3), and did not take effect. See Effective Dates note.

§ 38-1802.08. Reduced fares for public transportation.

A student attending a public charter school shall be eligible for reduced fares on the Metrobus and Metrorail Transit System on the same terms and conditions as are applicable under subchapter II of Chapter 2 of Title 35, to a student attending a District of Columbia public school.

(Apr. 26, 1996, 110 Stat. 1321 [244], Pub. L. 104-134, § 2208.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.18.

§ 38-1802.09. District of Columbia public school services to public charter schools.

(a) *In general.* — The Office of Public Education Facilities Modernization may provide services, such as facilities maintenance, to public charter schools. All compensation for costs of such services shall be subject to negotiation and mutual agreement between a public charter school and the Office of Public Education Facilities Modernization.

(b) *Preference in leasing or purchasing public school facilities.* —

(1) *Current and former public school properties.* —

(A)(i) *In general.* — Notwithstanding any other provision of law, regulation, or order relating to the disposition of a facility or property described in subparagraph (B) of this paragraph, the Mayor and the District of Columbia government shall give a right of first offer with respect to any facility or property described in subparagraph (B) of this paragraph not previously purchased, leased, or transferred, or under contract to be purchased, leased, or transferred, or the subject of a previously proposed resolution submitted by the Mayor on or before December 1, 2004, to the Council of the District of Columbia seeking authority for disposition of such facility or property, or under an Exclusive Rights Agreement executed on or before December 1, 2004, to an eligible applicant whose petition to establish a public charter school has been conditionally approved under § 38-1802.03(d)(2), or a Board of Trustees, with respect to the purchase, lease, transfer, or use of a facility or property described in subparagraph (B) of this paragraph; provided, that the right of first offer shall be offered to an existing tenant that is:

(I)(aa) A public charter school that has occupied all, or substantially all, of the facility or property; or

(bb) An organization providing educational or youth services under contract with the District government that has been a tenant of the facility or property and has occupied all, or substantially all, of the facility or property since on or before December 1, 2004; and

(II) In good standing on its existing lease agreement.

(ii) Nothing in sub-subparagraph (i) of this subparagraph shall be

construed to deem a facility or property to be surplus or to authorize the Mayor to dispose of a facility or property.

(B) *Property described.* — A facility or property referred to in subparagraph (A) of this paragraph is a facility, or real property:

(i) That formerly was under the jurisdiction of the Board of Education;

(ii) That the former Board of Education or the Mayor or the Chancellor of the District of Columbia Public Schools has determined is no longer needed for purposes of operating a District of Columbia public school; and

(iii) With respect to which:

(I) The Board of Education has transferred jurisdiction to the Mayor and over which the Mayor has jurisdiction on October 18, 2004; or

(II) Over which the Mayor or any successor agency gains jurisdiction after October 18, 2004.

(C) *Terms of purchase or lease.* — The terms of purchase or lease of a facility or property described in subparagraph (B) of this paragraph shall:

(i) Be negotiated by the Mayor in accordance with written rules or regulations as determined by the Mayor, and published in the District of Columbia Register;

(ii) Include rent or an acquisition price, as applicable, that is at the appraised value of the property based on use of the property for school purposes; and

(iii) Include a lease period, if the property is to be leased, of not less than 25 years, and renewable for additional 25-year periods as long as the eligible applicant or Board of Trustees maintains its charter; provided, that leases involving co-location agreements may include a lease period of less than 25 years.

(2) Repealed.

(3) *Conversion public charter schools.* — Any District of Columbia public school that was approved to become a conversion public charter school under § 38-1802.01 before October 18, 2004, or is approved to become a conversion public charter school after October 18, 2004, shall have the right to exclusively occupy the facilities the school occupied as a District of Columbia public school under a lease for a period of not less than 25 years, renewable for additional 25-year periods as long as the school maintains its charter at the appraised value of the property based on use of the property for school purposes.

(Apr. 26, 1996, 110 Stat. 1321 [244], Pub. L. 104-134, § 2209; Sept. 30, 1996, 110 Stat. 3009 [1466], Pub. L. 104-208, § 5205(d); Nov. 13, 2003, D.C. Law 15-39, § 332, 50 DCR 5668; Oct. 18, 2004, 118 Stat. 1349, Pub. L. 108-335, § 342(c); Dec. 8, 2004, 118 Stat. 3342, Pub. L. 108-447, Div. J, title I, § 103(a)(3); July 18, 2008, D.C. Law 17-183, § 2, 55 DCR 6099; Sept. 24, 2010, D.C. Law 18-223, § 4072, 57 DCR 6242.)

Cross references. — Disposition of certain school property, preference for public charter school, see § 47-392.25.

ferred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.19.

Section references. — This section is re-

Effect of amendments. — D.C. Law 15-39, in subsec. (b), inserted “first” before “preference” and inserted “, transfer, or use” after “lease” in subpar. (1)(A), and inserted “first” before “preference” in subpar. (2)(A).

Pub. L. 108-335, as amended by Pub. L. 108-447, in par. (1) of subsec. (b), rewrote subpars. (A) and (B)(iii), and added subpar. (C); in par. (2)(A) of subsec. (b), substituted “a right to first offer” for “preference”; and added par. (3) to subsec. (b).

Pub. L. 108-447 amended Pub. L. 108-335. See Effective Date notes.

D.C. Law 17-183 rewrote subsec. (b)(1)(A), which had read as follows: “(A) In general.—Notwithstanding any other provision of law, regulation, or order relating to the disposition of a facility or property described in subparagraph (B) of this paragraph, the Mayor and the District of Columbia government shall give a right of first offer with respect to any facility or property described in subparagraph (B) of this paragraph not previously purchased, leased, or transferred, or under contract to be purchased, leased, or transferred, or the subject of a previously proposed resolution submitted by the Mayor on or before December 1, 2004, to the Council of the District of Columbia seeking authority for disposition of such facility or property, or under an Exclusive Rights Agreement executed on or before December 1, 2004, to an eligible applicant whose petition to establish a public charter school has been conditionally approved under § 38-1802.03(d)(2), or a Board of Trustees, with respect to the purchase, lease, transfer, or use of a facility or property described in subparagraph (B) of this paragraph.”

D.C. Law 18-223, in subsec. (a), substituted “Office of Public Education Facilities Modernization” for “Superintendent”; in the lead-in language of subsec. (b)(1), substituted “Former public school property” for “current and former public school property”; in subsec. (b)(1)(B)(ii), substituted “former Board of Education or the Mayor or the Chancellor of the District of Columbia Public Schools” for “Board of Education”; in subsec. (b)(1)(C)(iii), substituted “its charter; provided, that leases involving co-location agreements may include a lease period of less than 25 years” for “its charter”; and repealed subsec. (b)(2).

Temporary Amendment of Section. — Section 3 of D.C. Laws 13-143 added subsec. (c) to read as follows:

“(c) Notwithstanding subsections (a) and (b) of this section, there shall be a moratorium on the conversion of any District of Columbia public school into a public charter school.”

Section 6(b) of D.C. Laws 13-143 provided: “This act shall expire after 225 days of its having taken effect or upon the effective date of the Moratorium on Conversion of Existing District of Columbia Public Schools into Charter

Schools Amendment Act of 2000, or upon the date that final action is taken on Bill 13-582, the “District of Columbia School Reform Amendment Act of 1999” and Bill 13-583, the “District of Columbia Public Charter School Conversion Petition Process Amendment Act of 2000”, or on amendments in the nature of a substitute to these two bills, whichever occurs first.”

Section 2 of D.C. Law 17-19, in subsec. (b)(1)(A), designated the existing text as subsec. (b)(1)(A)(i) and substituted “this paragraph; provided, that the right of first offer shall be offered to an existing tenant that is:

“(I)(aa) A public charter school that has occupied all, or substantially all, of the facility or property; or

“(bb) An organization providing educational or youth services under contract with the District government that has been a tenant of the facility or property, and has occupied all, or substantially all, of the facility or property since on or before December 1, 2004; and

“(II) In good standing on its existing lease agreement.” for “this paragraph.”, and added subsec. (b)(1)(A)(ii) to read as follows:

“(ii) Nothing in sub-subparagraph (i) of this subparagraph shall be construed to deem a facility or property to be surplus or to authorize the Mayor to dispose of a facility or property.”

Section 4(b) of D.C. Law 17-19 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 3 of the Moratorium on Conversion of Existing Public Schools into Charter Schools Emergency Amendment Act of 2000 (D.C. Act 13-311, April 7, 2000, 47 DCR 2735).

For temporary (90 day) amendment of section, see § 332 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 332 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 2 of District of Columbia School Reform Property Disposition Clarification Emergency Amendment Act of 2007 (D.C. Act 17-50, May 15, 2007, 54 DCR 5362).

For temporary (90 day) amendment of section, see § 2 of District of Columbia School Reform Property Disposition Clarification Emergency Amendment Act of 2008 (D.C. Act 17-370, May 20, 2008, 55 DCR 6090).

For temporary (90 day) addition, see § 4131 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 4131 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 4072 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Legislative history of Law 17-183. — Law 17-183, the “District of Columbia School Reform Property Disposition Clarification Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-217 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 15, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 20, 2008, it was assigned Act No. 17-376 and transmitted to both Houses of Congress for its review. D.C. Law 17-183 became effective on July 18, 2008.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Short title. — Short title of subtitle D of title III of Law 15-39: Section 331 of D.C. Law 15-39 provided that subtitle D of title III of the act may be cited as the Public Charter School Facilities Preference Amendment Act of 2003.

Short title: Section 4130 of D.C. Law 18-111 provided that subtitle N of title IV of the act may be cited as the “District of Columbia School Reform Education Facility Act of 2009”.

Short title: Section 4071 of D.C. Law 18-223 provided that subtitle H of title IV of the act may be cited as the “Public Charter School Access to District of Columbia Public School Buildings Clarification Amendment Act of 2010”.

Effective date. — Section 103(b) of Div. J, title I, of Pub. L. 108-447, provided: “The amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335]”.

Delegation of Authority. — Delegation of the Mayor’s Surplus Property Disposition Authority to the Director of the Office of Property Management to Dispose of Specified Properties on Behalf of the District of Columbia, see Mayor’s Order 2000-173, November 8, 2000 (47 DCR 9540).

Delegation of Authority-Office of Property Management, see Mayor’s Order 2007-260, December 7, 2007 (55 DCR 211).

Delegation of Authority Regarding the Purchase, Lease, Transfer, or Use of Former and Current School Property, see Mayor’s Order 2008-162, December 4, 2008 (56 DCR 330).

Mayor’s Orders. — Procedures for Disposition of Surplus Properties and Facilities Formerly Under the Jurisdiction of the D.C. Public Schools, see Mayor’s Order 2000-150, October 5, 2000 (47 DCR 8266).

Editor’s notes. — Section 4131 of D.C. Law 18-111 provided:

“(a) Pursuant to section 2209(b)(1)(A)(i)(I)(bb) of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.09(b)(1)(A)(i)(I)(bb)), Associates for Renewal of Education, Inc., as an organization providing youth and educational services and a tenant of Slater School since prior to December 2004, shall:

“(1) Be offered the right of first offer on a disposition of Slater School;

“(2) Be permitted to remain and continue to operate in Slater School under existing terms and conditions throughout the leasing preference procedure; and

“(3) Be permitted to make any functional improvements and general repairs as necessary.

“(b) The Office of Property Management shall finalize a lease with Associates for Renewal of Education, Inc., within 90 days of the effective date of the District of Columbia School Reform Education Facility Emergency Act of 2009, passed on emergency basis on September 22, 2009 (Enrolled version of Bill 18-443) October 15, 2009.”

§ 38-1802.10. Application of law.

(a) *Elementary and Secondary Education Act of 1965.* —

(1) *Treatment as local educational agency.* —

(A) *In general.* — For any fiscal year, a public charter school shall be considered to be a local educational agency for purposes of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), and shall be eligible for assistance under such part, if the fraction the numerator of which is the number of low-income students enrolled in the public charter school during the fiscal year preceding the fiscal year for which the determination is made and the denominator of which is the total number of students enrolled in such public charter school for such preceding year, is equal to or

greater than the lowest fraction determined for any District of Columbia public school receiving assistance under such part A where the numerator is the number of low-income students enrolled in such public school for such preceding year and the denominator is the total number of students enrolled in such public school for such preceding year.

(B) *Definition.* — For the purposes of this subsection, the term “low-income student” means a student from a low-income family determined according to the measure adopted by the District of Columbia to carry out the provisions of part A of title I of the Elementary and Secondary Education Act of 1965 that is consistent with the measures described in § 1113(a)(5) of such Act (20 U.S.C. 6313(a)(5)) for the fiscal year for which the determination is made.

(2) *Allocation for fiscal years 1996 through 1998.* —

(A) *Public charter schools.* — For fiscal years 1996 through 1998, each public charter school that is eligible to receive assistance under part A of title I of the Elementary and Secondary Education Act of 1965 shall receive a portion of the District of Columbia’s total allocation under such part which bears the same ratio to such total allocation as the number described in subparagraph (C) of this paragraph bears to the number described in subparagraph (D) of this paragraph.

(B) *District of Columbia public schools.* — For fiscal years 1996 through 1998, the District of Columbia public schools shall receive a portion of the District of Columbia’s total allocation under part A of title I of the Elementary and Secondary Education Act of 1965 which bears the same ratio to such total allocation as the total of the numbers described in subsubparagraphs (ii) and (iii) of subparagraph (D) bears to the aggregate total described in subparagraph (D) of this paragraph.

(C) *Number of eligible students enrolled in the public charter school.* — The number described in this subparagraph is the number of low-income students enrolled in the public charter school during the fiscal year preceding the fiscal year for which the determination is made.

(D) *Aggregate number of eligible students.* — The number described in this subparagraph is the aggregate total of the following numbers:

(i) The number of low-income students who, during the fiscal year preceding the fiscal year for which the determination is made, were enrolled in a public charter school.

(ii) The number of low-income students who, during the fiscal year preceding the fiscal year for which the determination is made, were enrolled in a District of Columbia public school selected to provide services under part A of title I of the Elementary and Secondary Education Act of 1965; and

(iii) The number of low-income students who, during the fiscal year preceding the fiscal year for which the determination is made:

(I) Were enrolled in a private or independent school; and

(II) Resided in an attendance area of a District of Columbia public school selected to provide services under part A of title I of the Elementary and Secondary Education Act of 1965.

(3) *Allocation for fiscal year 1999 and thereafter.* —

(A) *Calculation by Secretary.* — Notwithstanding §§ 1124(a)(2),

1124A(a)(4), and 1125(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. §§ 6333(a)(2), 6334(a)(4), and 6335(d)), for fiscal year 1999 and each fiscal year thereafter, the total allocation under part A of title I of such Act for all local educational agencies in the District of Columbia, including public charter schools that are eligible to receive assistance under such part, shall be calculated by the Secretary of Education. In making such calculation, such Secretary shall treat all such local educational agencies as if such agencies were a single local educational agency for the District of Columbia.

(B) *Allocation.* —

(i) *Public charter schools.* — For fiscal year 1999 and each fiscal year thereafter, each public charter school that is eligible to receive assistance under part A of title I of the Elementary and Secondary Education Act of 1965 shall receive a portion of the total allocation calculated under subparagraph (A) of this paragraph which bears the same ratio to such total allocation as the number described in paragraph (2)(C) of this subsection bears to the aggregate total described in paragraph (2)(D) of this subsection.

(ii) *District of Columbia public school.* — For fiscal year 1999 and each fiscal year thereafter, the District of Columbia public schools shall receive a portion of the total allocation calculated under subparagraph (A) of this paragraph which bears the same ratio to such total allocation as the total of the numbers described in subsubparagraphs (ii) and (iii) of paragraph (2)(D) of this subsection bears to the aggregate total described in paragraph (2)(D) of this subsection.

(4) *Use of ESEA funds.* — The Board of Education may not direct a public charter school in the school's use of funds under part A of title I of the Elementary and Secondary Education Act of 1965.

(5) *ESEA requirements.* — Except as provided in paragraph (6) of this subsection, a public charter school receiving funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) shall comply with all requirements applicable to schools receiving such funds.

(6) *Inapplicability of certain ESEA provisions.* — The following provisions of the Elementary and Secondary Education Act of 1965 shall not apply to a public charter school:

(A) Paragraphs (5) and (8) of § 1112(b) (20 U.S.C. 6312(b));

(B) Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), (1)(F), (1)(H), and (3) of § 1112(c) (20 U.S.C. 6312(c));

(C) Section 1113 (20 U.S.C. 6313);

(D) Section 1115A (20 U.S.C. 6316);

(E) Subsections (a), (b), and (c) of § 1116 (20 U.S.C. 6317);

(F) Subsections (d) and (e) of § 1118 (20 U.S.C. 6319);

(G) Section 1120 (20 U.S.C. 6321);

(H) Subsections (a) and (c) of § 1120A (20 U.S.C. 6322); and

(I) Section 1126 (20 U.S.C. 6337).

(b) *Property and sales taxes.* — A public charter school shall be exempt from District of Columbia property and sales taxes.

(c) *Education of children with disabilities.* — Notwithstanding any other provision of this chapter, each public charter school shall elect to be treated as a local educational agency or a District of Columbia public school for the purpose of part B of the Individuals With Disabilities Education Act (20 U.S.C. 1411 et seq.) and § 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(d) *Waiver of application of duplicate and conflicting provisions.* — Notwithstanding any other provision of law, and except as otherwise provided in this chapter, no provision of any law regarding the establishment, administration, or operation of public charter schools in the District of Columbia shall apply with respect to a public charter school or an eligible chartering authority to the extent that the provision duplicates or is inconsistent with any provision of this chapter.

(e) *Participation in GSA programs.* —

(1) *In general.* — Notwithstanding any provision of this chapter or any other provision of law, a public charter school may acquire goods and services through the General Services Administration and may participate in programs of the Administration in the same manner and to the same extent as any entity of the District of Columbia government.

(2) *Participation by certain organizations.* — A public charter school may delegate to a nonprofit, tax-exempt organization in the District of Columbia the public charter school's authority under paragraph (1) of this subsection.

(Apr. 26, 1996, 110 Stat. 1321 [244], Pub. L. 104-134, § 2210; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 120(b)(1), (e).)

Section references. — This section is referred to in §§ 38-1800.02, § 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.20.

Effect of amendments. — Section 120 (b)(1) of Public Law 106-522 added subsec. (d) providing for waiver of application of duplicate and conflicting provisions. Section 120 (e) of Public Law 106-522 added subsec. (e) pertaining to participation in GSA programs.

Temporary Amendment of Section. — Section 7 of D.C. Law 14-191 repealed subsec. (b).

Section 16(b) of D.C. Law 14-191 provided that the act shall expire after 225 days of its having taken effect.

Section 7 of D.C. Law 14-228 repealed subsec. (b).

Section 18(b) of D.C. Law 14-228 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 7 of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) amendment of section, see § 7 of Tax Clarity and Related Amendments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see § 7 of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 14-191. — Law 14-191, the "Tax Clarity and Recorder of Deeds Temporary Act of 2002", was introduced in Council and assigned Bill No. 14-667, which was retained by the Council. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 10, 2002, it was assigned Act No. 14-404 and transmitted to both Houses of Congress for its review. D.C. Law 14-191 became effective on October 5, 2002.

Legislative history of Law 14-228. — Law 14-228, the "Tax Clarity and Related Amendments Temporary Act of 2002", was introduced in Council and assigned Bill No. 14-763, and was retained by Council. The Bill was adopted on first and second readings on July 2, 2002, and September 17, 2002, respectively. Signed by the Mayor on October 3, 2002, it was assigned Act No. 14-483 and transmitted to both Houses of Congress for its review. D.C. Law 14-228 became effective on March 25, 2003.

Effective date. — Section 120 (b)(2) provided: "(2) Effective Date.—The amendments made by this subsection shall take effect as if

included in the enactment of the District of Columbia School Reform Act of 1995.”

§ 38-1802.11. Powers and duties of eligible chartering authorities.

(a) *Oversight.* —

(1) *In general.* — An eligible chartering authority:

(A) Shall monitor the operations of each public charter school to which the eligible chartering authority has granted a charter;

(B) Shall ensure that each such school complies with applicable laws and the provisions of the charter granted to such school;

(C) Shall monitor the progress of each such school in meeting student academic achievement expectations specified in the charter granted to such school.

(D) Shall ensure that each public charter school complies with the annual reporting requirement of § 38-1802.04(c)(11), including submission of the audited financial statement required by § 38-1802.04(c)(11)(B)(ix).

(2) *Production of books and records.* — An eligible chartering authority may require a public charter school to which the eligible chartering authority has granted a charter to produce any book, record, paper, or document, if the eligible chartering authority determines that such production is necessary for the eligible chartering authority to carry out its functions under this subchapter.

(b) *Fees.* —

(1) *Application fee.* — An eligible chartering authority may charge an eligible applicant a fee, not to exceed \$150, for processing a petition to establish a public charter school.

(2) *Administration fee.* — In the case of an eligible chartering authority that has granted a charter to a public charter school, the eligible chartering authority may charge the school a fee, not to exceed one-half of one percent of the annual budget of the school, to cover the cost of undertaking the ongoing administrative responsibilities of the eligible chartering authority with respect to the school that are described in this subchapter. The school shall pay the fee to the eligible chartering authority not later than November 15 of each year.

(c) *Immunity from civil liability.* —

(1) *In general.* — An eligible chartering authority, the Board of Trustees of such an eligible chartering authority, and a director, officer, employee, or volunteer of such an eligible chartering authority, shall be immune from civil liability, both personally and professionally, for any act or omission within the scope of their official duties unless the act or omission:

(A) Constitutes gross negligence;

(B) Constitutes an intentional tort; or

(C) Is criminal in nature.

(2) *Common law immunity preserved.* — Paragraph (1) of this subsection shall not be construed to abrogate any immunity under common law of a person described in such paragraph.

(d) *Annual report.* — On or before July 30 of each year, each eligible chartering authority that issues a charter under this subchapter shall submit

a report to the Mayor, the District of Columbia Council, the Board of Education, the Secretary of Education, the appropriate congressional committees, and the Consensus Commission that includes the following information:

(1) A list of the members of the eligible chartering authority and the addresses of such members;

(2) A list of the dates and places of each meeting of the eligible chartering authority during the year preceding the report;

(3) The number of petitions received by the eligible chartering authority for the conversion of a District of Columbia public school or a private or independent school to a public charter school, and for the creation of a new school as a public charter school;

(4) The number of petitions described in paragraph (3) of this subsection that were approved and the number that were denied, as well as a summary of the reasons for which such petitions were denied;

(5) A description of any new charters issued by the eligible chartering authority during the year preceding the report;

(6) A description of any charters renewed by the eligible chartering authority during the year preceding the report;

(7) A description of any charters revoked by the eligible chartering authority during the year preceding the report;

(8) A description of any charters refused renewal by the eligible chartering authority during the year preceding the report;

(9) Any recommendations the eligible chartering authority has concerning ways to improve the administration of public charter schools;

(10) Details of major Board actions;

(11) Major findings from school reviews of academic, financial, and compliance with health and safety standards and resulting Board action or recommendations;

(12) Details of the fifth year review process and outcomes;

(13) Summary of annual financial audits of all charter schools, including:

(A) The number of schools that failed to timely submit the audited financial statement required by that section;

(B) The number of schools whose audits revealed a failure to follow required accounting practices or other material deficiencies; and

(C) The steps taken by the authority to ensure that deficiencies found by the audits are rectified;

(14) Number of schools which have required intervention by authorizing board to address any academic or operational issue;

(15) What recommendations an authorizing board has made to correct identified deficiencies.

(Apr. 26, 1996, 110 Stat. 1321 [247], Pub. L. 104-134, § 2211; Oct. 18, 2004, 118 Stat. 1349, Pub. L. 108-335, § 343.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, and 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.21.

Effect of amendments. — Pub. L. 108-335,

in subsec. (a), added subpar. (1)(D); and in subsec. (d), added pars. (10) through (15).

§ 38-1802.12. Charter renewal.

(a) *Terms.* —

(1) *Initial term.* — A charter granted to a public charter school shall remain in force for a 15-year period.

(2) *Renewals.* — A charter may be renewed for an unlimited number of times, each time for a 15-year period.

(3) *Review.* — An eligible chartering authority that grants or renews a charter pursuant to paragraph (1) or (2) of this subsection shall review the charter at least once every 5 years to determine whether the charter should be revoked for the reasons described in § 38-1802.13(a) or (b), in accordance with the procedures for revocation established under § 38-1802.13.

(b) *Application for charter renewal.* — In the case of a public charter school that desires to renew its charter, the Board of Trustees of the school shall file an application to renew the charter with the eligible chartering authority that granted the charter not later than 120 days nor earlier than 365 days before the expiration of the charter. The application shall contain the following:

(1) A report on the progress of the public charter school in achieving the goals, student academic achievement expectations, and other terms of the approved charter;

(2) All audited financial statements for the public charter school for the preceding 4 years; and

(3) The articles of incorporation and bylaws of the nonprofit corporation operating the charter school, which shall contain provisions satisfying the requirements of § 38-1802.13a.

(c) *Approval of charter renewal application.* — The eligible chartering authority that granted a charter shall approve an application to renew the charter that is filed in accordance with subsection (b) of this section, except that the eligible chartering authority shall not approve such application if the eligible chartering authority determines that:

(1) The school committed a material violation of applicable laws or a material violation of the conditions, terms, standards, or procedures set forth in its charter, including violations relating to the education of children with disabilities; or

(2) The school failed to meet the goals and student academic achievement expectations set forth in its charter.

(d) *Procedures for consideration of charter renewal.* —

(1) *Notice of right to hearing.* — An eligible chartering authority that has received an application to renew a charter that is filed by a Board of Trustees in accordance with subsection (b) of this section shall provide to the Board of Trustees written notice of the right to an informal hearing on the application. The eligible chartering authority shall provide the notice not later than 15 days after the date on which the eligible chartering authority received the application.

(2) *Request for hearing.* — Not later than 15 days after the date on which a Board of Trustees receives a notice under paragraph (1) of this subsection,

the Board of Trustees may request, in writing, an informal hearing on the application before the eligible chartering authority.

(3) *Date and time of hearing.* —

(A) *Notice.* — Upon receiving a timely written request for a hearing under paragraph (2) of this subsection, an eligible chartering authority shall set a date and time for the hearing and shall provide reasonable notice of the date and time, as well as the procedures to be followed at the hearing, to the Board of Trustees.

(B) *Deadline.* — An informal hearing under this subsection shall take place not later than 30 days after an eligible chartering authority receives a timely written request for the hearing under paragraph (2) of this subsection.

(4) *Final decision.* —

(A) *Deadline.* — An eligible chartering authority shall render a final decision, in writing, on an application to renew a charter:

(i) Not later than 30 days after the date on which the eligible chartering authority provided the written notice of the right to a hearing, in the case of an application with respect to which such a hearing is not held; and

(ii) Not later than 30 days after the date on which the hearing is concluded, in the case of an application with respect to which a hearing is held.

(B) *Reasons for nonrenewal.* — An eligible chartering authority that denies an application to renew a charter shall state in its decision the reasons for denial.

(5) *Alternatives upon nonrenewal.* — If an eligible chartering authority denies an application to renew a charter granted to a public charter school, the Board of Education may:

(A) Manage the school directly until alternative arrangements can be made for students at the school; or

(B) Place the school in a probationary status that requires the school to take remedial actions, to be determined by the Board of Education, that directly relate to the grounds for the denial.

(6) *Judicial review.* — A decision by an eligible chartering authority to deny an application to renew a charter shall be subject to judicial review by an appropriate court of the District of Columbia.

(Apr. 26, 1996, 110 Stat. 1321 [248], Pub. L. 104-134, § 2212; Sept. 30, 1996, 110 Stat. 3009 [1468], Pub. L. 104-208, § 5205(e); Mar. 14, 2007, D.C. Law 16-268, § 4(e), 54 DCR 833; June 12, 2007, D.C. Law 17-9, § 802(d), 54 DCR 4102; Mar. 25, 2009, D.C. Law 17-353, § 160(a)(2), 56 DCR 1117.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, 38-1802.13, and 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.22.

Effect of amendments. — D.C. Law 16-268, in subsec. (b)(1), substituted a semicolon for a period; in subsec. (b)(2), substituted “; and” for a period; and added subsec. (b)(3).

D.C. Law 17-9 rewrote subsec. (a)(3).

D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

Emergency legislation. — For temporary (90 day) repeal of section 804 of D.C. Law 17-9, see § 4043(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-268. — For Law 16-268, see notes following § 38-1701.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

Editor's notes. — Applicability: Section 804 of D.C. Law 17-9 provided that section 802

shall apply upon enactment by Congress. Section 804 of D.C. Law 17-9 was repealed by section 4043(b) of D.C. Law 17-20.

§ 38-1802.13. Charter revocation.

(a) *Charter or law violations; failure to meet goals.* — Using the record established by the eligible chartering authority, an eligible chartering authority that has granted a charter to a public charter school may revoke the charter if the eligible chartering authority determines that the school:

(1) Committed a violation of applicable law or a material violation of the conditions, terms, standards, or procedures set forth in the charter, including violations relating to the education of children with disabilities; or

(2) Has failed to meet the goals and student academic achievement expectations set forth in the charter.

(b) *Fiscal mismanagement.* — An eligible chartering authority that has granted a charter to a public charter school shall revoke the charter if the eligible chartering authority determines that the school:

(1) Has engaged in a pattern of nonadherence to generally accepted accounting principles;

(2) Has engaged in a pattern of fiscal mismanagement; or

(3) Is no longer economically viable.

(c) *Procedures for consideration of revocation.* —

(1) *Notice of right to hearing.* — An eligible chartering authority that is proposing to revoke a charter granted to a public charter school shall provide to the Board of Trustees of the school a written notice stating the reasons for the proposed revocation. The notice shall inform the Board of Trustees of the right of the Board of Trustees to an informal hearing on the proposed revocation.

(2) *Request for hearing.* — Not later than 15 days after the date on which a Board of Trustees receives a notice under paragraph (1) of this subsection, the Board of Trustees may request, in writing, an informal hearing on the proposed revocation before the eligible chartering authority.

(3) *Date and time of hearing.* —

(A) *Notice.* — Upon receiving a timely written request for a hearing under paragraph (2) of this subsection, an eligible chartering authority shall set a date and time for the hearing and shall provide reasonable notice of the date and time, as well as the procedures to be followed at the hearing, to the Board of Trustees.

(B) *Deadline.* — An informal hearing under this subsection shall take place not later than 30 days after an eligible chartering authority receives a timely written request for the hearing under paragraph (2) of this subsection.

(4) *Final decision.* —

(A) *Deadline.* — An eligible chartering authority shall render a final decision, in writing, on the revocation of a charter:

(i) Not later than 30 days after the date on which the eligible chartering authority provided the written notice of the right to a hearing, in

the case of a proposed revocation with respect to which such a hearing is not held; and

(ii) Not later than 30 days after the date on which the hearing is concluded, in the case of a proposed revocation with respect to which a hearing is held.

(B) *Reasons for revocation.* — An eligible chartering authority that revokes a charter shall state in its decision the reasons for the revocation.

(5) *Alternatives upon revocation.* — If an eligible chartering authority revokes a charter granted to a public charter school, the eligible chartering authority may manage the school directly until alternative arrangements can be made for students at the school.

(6) *Judicial review.* —

(A) *Availability of review.* — A decision by an eligible chartering authority to revoke a charter shall be subject to judicial review by an appropriate court of the District of Columbia.

(B) *Standard of review.* — A decision by an eligible chartering authority to revoke a charter shall be upheld unless the decision is arbitrary and capricious or clearly erroneous.

(Apr. 26, 1996, 110 Stat. 1321 [250], Pub. L. 104-134, § 2213; Sept. 30, 1996, 110 Stat. 3009 [1470], Pub. L. 104-208, § 5205(f); June 12, 2007, D.C. Law 17-9, § 802(e), 54 DCR 4102; Mar. 25, 2009, D.C. Law 17-353, § 203(b), 56 DCR 1117.)

Cross references. — Uniform per student funding formula, “Public Charter School” defined, see § 38-2901.

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, 38-1802.12, and 38-180.

Prior Codifications. — 1981 Ed., § 31-2853.23.

Effect of amendments. — D.C. Law 17-9 rewrote subsec. (a); and, in subsec. (c)(5), substituted “eligible chartering authority” for “Board of Education”.

D.C. Law 17-353, in subsec. (a), substituted “established by the eligible chartering authority” for “established by the chartering authority”.

Emergency legislation. — For temporary (90 day) repeal of section 804 of D.C. Law 17-9, see § 4043(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

Editor’s notes. — Applicability: Section 804 of D.C. Law 17-9 provided that section 802 shall apply upon enactment by Congress. Section 804 of D.C. Law 17-9 was repealed by section 4043(b) of D.C. Law 17-20.

CASE NOTES

Hearing.

Court of Appeals had jurisdiction to determine whether public charter schools were improperly denied a contested case hearing prior to final revocation of their charters. *Richard Milburn Pub. Charter Alternative High Sch. v. Cafritz*, 798 A.2d 531, 2002 D.C. App. LEXIS 293 (2002).

There is no statutory requirement for a contested case hearing before the revocation of a public school charter. *Richard Milburn Pub. Charter*

Alternative High Sch. v. Cafritz, 798 A.2d 531, 2002 D.C. App. LEXIS 293 (2002).

Due process clause did not require that District Board of Education conduct contested case hearing before deciding to revoke public school charters; board held informal hearing, issues presented were those of compliance with statutory requirements, schools were provided with opportunity to address specific findings upon which Board relied, and schools had right of judicial review. *Richard Milburn Pub. Charter*

Alternative High Sch. v. Cafritz, 798 A.2d 531,
2002 D.C. App. LEXIS 293 (2002).

§ 38-1802.13a. Mandatory dissolution.

(a) A nonprofit corporation operating a charter school shall dissolve if the charter for the school:

- (1) Has been revoked by the authorizing entity;
- (2) Has not been renewed by the authorizing entity; or
- (3) Has been voluntarily relinquished by the charter school.

(b) The distribution of assets upon dissolution required by subsection (a) of this section shall be in accordance with § 29-301.48 and this section.

(c)(1) Except as provided in paragraph (2) of this subsection, the articles of incorporation or the bylaws of a nonprofit corporation operating the charter school shall require that:

(A) The corporation shall dissolve if the charter for the charter school has been revoked, has not been renewed, or has been voluntarily relinquished; and

(B) Any assets to be distributed pursuant to a plan of distribution under § 29-301.48(3) shall be transferred to the State Education Office of the District of Columbia, to be controlled by the Office of Education Facilities and Partnerships and used solely for educational purposes.

(2) A nonprofit corporation with an existing charter as of March 14, 2007, shall not be required to amend its articles of incorporation or bylaws to comply with the requirements of this section until the time of its charter renewal under § 38-1802.12.

(3) Nothing in this subsection shall be construed as exempting the corporation from any other requirements of this section.

(d)(1) The chartering authority, in consultation with the Board of Trustees, shall develop and execute a plan for:

(A) Liquidating the corporation's assets in a timely fashion and in a manner that will achieve maximum value;

(B) Discharging the corporation's debts; and

(C) Distributing any remaining assets in accordance with this section and § 29-301.48(3).

(2) The plan shall:

(A) Provide that assets to be distributed pursuant to § 29-301.48(3) be transferred or conveyed to the District of Columbia, to be controlled by the Office of Education Facilities and Partnerships within the State Education Office and used solely for educational purposes; and

(B) Be in accordance with the terms of existing creditor agreements and applicable laws, and creditors shall retain all rights, powers, and remedies available to them to cure default as defined in their agreements with the charter school.

(3) As soon as feasible, the Board of Trustees shall complete and submit to the authorizing entity a closeout audit, which shall include:

(A) An account of the present value of the charter school's liabilities held by all of its creditors, including:

- (i) Banking institutions;
- (ii) Vendors; and
- (iii) State pension and health benefits agencies; and

(B) An account of the present value of the charter school's assets, including:

- (i) Books;
- (ii) Supplies;
- (iii) Motor vehicles;
- (iv) Furnishing;
- (v) Equipment; and
- (vi) Facilities.

(4) Nothing in this subsection shall be construed as making the chartering authority or the District of Columbia liable for debts incurred by the corporation.

(e) The chartering authority, in consultation with the Board of Trustees, shall arrange for the transfer and storage of necessary student records in the possession of the charter school.

(f) The chartering authority may utilize assets of the charter school to provide for:

(1) The transfer and storage of student records pursuant to subsection (e) of this section; and

(2) Any other actual expenses incurred by the authorizing entity as a result of the dissolution of the nonprofit organization operating the charter school.

(Apr. 26, 1996, 110 Stat. 1321 251, Pub. L. 104-134, § 2213a, as added Mar. 14, 2007, D.C. Law 16-268, § 4(f), 54 DCR 833.)

Legislative history of Law 16-268. — Law 16-268, the “Public Charter School Assets and Facilities Preservation Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-624, which was referred to Committee on Education, Libraries and Recreation. The Bill was adopted on first and second read-

ings on December 6, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-624 and transmitted to both Houses of Congress for its review. D.C. Law 16-268 became effective on March 14, 2007.

§ 38-1802.14. Public Charter School Board.

(a) *Establishment.* —

(1) *In general.* — There is established within the District of Columbia Government a Public Charter School Board (in this section referred to as the “Board”).

(2) *Membership.* — The Board shall consist of 7 members, appointed by the Mayor, with the advice and consent of the Council. Members shall be selected so that knowledge of each of the following areas is represented on the Board:

(A) Research about and experience in student learning, quality teaching, and evaluation of and accountability in successful schools;

(B) The operation of a financially sound enterprise, including leader-

ship and management techniques, as well as the budgeting and accounting skills critical to the startup of a successful enterprise;

(C) The educational, social, and economic development needs of the District of Columbia; and

(D) The needs and interests of students and parents in the District of Columbia, as well as methods of involving parents and other members of the community in individual schools.

(3) *Vacancies.* — Where a vacancy occurs in the membership of the Board for reasons other than the expiration of the term of a member, the Mayor shall appoint, with the advice and consent of the Council, an individual to serve in the vacant position, taking into consideration the criteria described in paragraph (2) of this subsection. Any member appointed to fill a vacancy occurring prior to the expiration of the term of a predecessor shall be appointed only for the remainder of the term.

(4) Repealed.

(5) *Terms of members.* —

(A) *In general.* — Members of the Board shall serve for terms of 4 years, except that, of the initial appointments made under paragraph (2) of this subsection, the Mayor shall designate:

(i) Two members to serve terms of 3 years;

(ii) Two members to serve terms of 2 years; and

(iii) One member to serve a term of one year.

(B) *Reappointment.* — Members of the Board shall be eligible to be reappointed for one 4-year term beyond their initial term of appointment.

(6) *Independence.* — No person employed by the District of Columbia public schools or a public charter school shall be eligible to be a member of the Board or to be employed by the Board.

(b) *Operations of the Board.* —

(1) *Chair.* — The members of the Board shall elect from among their membership 1 individual to serve as Chair. Such election shall be held each year after members of the Board have been appointed to fill any vacancies caused by the regular expiration of previous members' terms, or when requested by a majority vote of the members of the Board.

(2) *Quorum.* — A majority of the members of the Board, not including any positions that may be vacant, shall constitute a quorum sufficient for conducting the business of the Board.

(3) *Meetings.* — The Board shall meet at the call of the Chair, subject to the hearing requirements of §§ 38-1802.03, 38-1802.12(d)(3), and 38-1802.13(c)(3), and all meetings of the Board shall be open to the public and shall provide a reasonable time during the meeting for public comment.

(c) *No compensation for service.* — Members of the Board shall serve without pay, but may receive reimbursement for any reasonable and necessary expenses incurred by reason of service on the Board.

(d) *Personnel and resources.* —

(1) *In general.* — Subject to such rules as may be made by the Board, the Chair shall have the power to appoint, terminate, and fix the pay of an Executive Director and such other personnel of the Board as the Chair

considers necessary. The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(2) *Special rule.* — The Board is authorized to use the services, personnel, and facilities of the District of Columbia.

(3) *District residency.* — Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Board unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Board shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(e) *Expenses of Board.* — Any expenses of the Board shall be paid from such funds as may be available to the Mayor; provided, That within 45 days of April 26, 1996, the Mayor shall make available not less than \$130,000 to the Board.

(f) *Audit.* — The Board shall maintain its accounts according to Generally Accepted Accounting Principles. The Board shall provide for an audit of the financial statements of the Board by an independent certified public accountant in accordance with Government auditing standards for financial audits issued by the Comptroller General. The findings and recommendations of any such audit shall be forwarded to the Mayor, the Council of the District of Columbia, and the Office of the Chief Financial Officer of the District of Columbia.

(g) *Authorization of appropriations.* — For the purpose of carrying out the provisions of this section and conducting the Board's functions required by this subchapter, there are authorized to be appropriated to the Board \$300,000 for fiscal year 1997 and such sums as may be necessary for each of the 3 succeeding fiscal years.

(h) *Contracting and procurement.* — The Board shall have the authority to solicit, award, and execute contracts independently of the Office of Contracting and Procurement and the Chief Procurement Officer.

(i) *Freedom of Information Act.* — The Board shall comply with all provisions of subchapter II of Chapter 5 of Title 2 [§ 2-531 et seq.].

(j) The Board shall consult with the Office of the State Superintendent of Education, established by § 38-2601, to ensure that the requirements and the goals of Chapter 2A of this title [§ 38-271.01 et seq.] ("Pre-k act") are met, in accordance with that chapter.

(Apr. 26, 1996, 110 Stat. 1321 251, Pub. L. 104-134, § 2214; Sept. 30, 1996, 110 Stat. 3009 [1471], Pub. L. 104-208, § 5205(g); Nov. 19, 1997, 111 Stat. 2191,

Pub. L. 105-100, § 169; Oct. 18, 2004, 118 Stat. 1352, Pub. L. 108-335, § 347; Dec. 8, 2004, 118 Stat. 3343, Pub. L. 108-447, § 103(a)(4); June 12, 2007, D.C. Law 17-9, § 802(f), 54 DCR 4102; Feb. 6, 2008, D.C. Law 17-108, § 214(b), 54 DCR 10993; July 18, 2008, D.C. Law 17-202, § 606, 55 DCR 6297; Mar. 25, 2009, D.C. Law 17-353, § 223(f), 56 DCR 1117; Sept. 24, 2010, D.C. Law 18-223, § 4082, 57 DCR 6242.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, and 38-1802.11.

Prior Codifications. — 1981 Ed., § 31-2853.24.

Effect of amendments. — Pub. L. 108-335, as amended by Pub. L. 108-447, rewrote subsec. (f), and added subsec. (h). Prior to amendment, subsec. (f) had read as follows: “(f) Audit.—The Board shall provide for an audit of the financial statements of the Board by an independent certified public accountant in accordance with Government auditing standards for financial audits issued by the Comptroller General of the United States.”

Pub. L. 108-447 amended Pub. L. 108-335. See Effective Dates note.

D.C. Law 17-9, in subsec. (b)(3), inserted “, and all meetings of the Board shall be open to the public and shall provide a reasonable time during the meeting for public comment”; and added subsec. (i).

D.C. Law 17-108, in subsec. (d)(1), inserted “The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.”; and, in subsec. (d)(2), inserted “Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Board unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after December 21, 2007, shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the Director of Personnel for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Board shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.”

D.C. Law 17-202 added subsec. (j).

D.C. Law 17-353 designated the former last six sentences of subsec. (d)(2) as subsec. (d)(3).

D.C. Law 18-223 rewrote the lead-in language of subsec. (a)(2); rewrote subsec. (a)(3); repealed subsec. (a)(4); and, in subsec. (d)(1), deleted “, but no individual so appointed shall be paid in excess of the rate payable for level EG-16 of the Educational Service of the District of Columbia” following “necessary”.

Emergency legislation. — For temporary (90 day) repeal of section 804 of D.C. Law 17-9, see § 4043(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 4082 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition of section, see § 4052 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of § 4052 of Act 19-383, see § 2 of the District of Columbia School Reform Extension of Time Emergency Amendment Act of 2012 (D.C. Act 19-410, July 24, 2012, 59 DCR 9137).

For temporary (90 day) amendment of § 4052 of Act 19-385, see § 3 of the District of Columbia School Reform Extension of Time Emergency Amendment Act of 2012 (D.C. Act 19-410, July 24, 2012, 59 DCR 9137).

For temporary (90 day) addition of section, see § 4052 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 38-1802.07.

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-202.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Short title. — Short title: Section 4081 of D.C. Law 18-223 provided that subtitle I of title IV of the act may be cited as the “Public Charter School Board Membership Selection and Staff Compensation Clarification Amendment Act of 2010”.

Effective date. — Section 103(b) of Div. J, title I, of Pub. L. 108-447, provided: “The

amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].”

Editor’s notes. — Section 346(d) of Pub. L. 108-335, 118 Stat. 1352, the District of Columbia Appropriations Act, 2005, provided:

“(d) Hereafter section 2214(f) of Public Law 104-143 (D.C. Code 38-1802.14(f)), shall apply

to the District of Columbia Board of Education Charter Schools Office.”

Applicability: Section 804 of D.C. Law 17-9 provided that section 802 shall apply upon enactment by Congress. Section 804 of D.C. Law 17-9 was repealed by section 4043(b) of D.C. Law 17-20.

D.C. Law 17-9 was repealed by section 4043(b) of D.C. Law 17-20.

§ 38-1802.15. Federal entities.

(a) *In general.* — The following federal agencies and federally established entities are encouraged to explore whether it is feasible for the agency or entity to establish one or more public charter schools:

- (1) The Library of Congress;
- (2) The National Aeronautics and Space Administration;
- (3) The Drug Enforcement Administration;
- (4) The National Science Foundation;
- (5) The Department of Justice;
- (6) The Department of Defense;
- (7) The Department of Education; and
- (8) The Smithsonian Institution, including the National Zoological Park, the National Museum of American History, the John F. Kennedy Center for the Performing Arts, and the National Gallery of Art.

(b) *Report.* — Not later than 120 days after April 26, 1996, any agency or institution described in subsection (a) of this section that has explored the feasibility of establishing a public charter school shall report its determination on the feasibility to the appropriate congressional committees.

(Apr. 26, 1996, 110 Stat. 1321 [253], Pub. L. 104-134, § 2215.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1802.03, 38-1802.04, 38-1802.05, 38-1802.11, and 38-1802.14.

Prior Codifications. — 1981 Ed., § 31-2853.25.

Subchapter III. World Class School Task Force, Core Curriculum, Content Standards, Assessments, and Promotion Gates.

Subpart A—World Class School Task Force, Core Curriculum, Content Standards, Assessments.

§ 38-1803.11. Grant authorized and recommendation required.

(a) *Grant authorized.* —

(1) *In general.* — The Superintendent is authorized to award a grant to a World Class Schools Task Force to enable such task force to make the recommendation described in subsection (b) of this section.

(2) *Definition.* — For the purpose of this subchapter, the term “World Class Schools Task Force” means 1 nonprofit organization located in the District of Columbia that:

(A) Has a national reputation for advocating content standards;

(B) Has a national reputation for advocating a strong liberal arts curriculum;

(C) Has experience with at least 4 urban school districts for the purpose of establishing content standards;

(D) Has developed and managed professional development programs in science, mathematics, the humanities and the arts; and

(E) Is governed by an independent board of directors composed of citizens with a variety of experiences in education and public policy.

(b) *Recommendation required.* —

(1) *In general.* — The World Class Schools Task Force shall recommend to the Superintendent, the Board of Education, and the District of Columbia Goals Panel the following:

(A) Content standards in the core academic subjects that are developed by working with the District of Columbia community, which standards shall be developed not later than 12 months after April 26, 1996.

(B) A core curriculum developed by working with the District of Columbia community, which curriculum shall include the teaching of computer skills.

(C) Districtwide assessments for measuring student achievement in accordance with content standards developed under subparagraph (A) of this paragraph. Such assessments shall be developed at several grade levels, including at a minimum, the grade levels with respect to which the Superintendent establishes promotion gates under § 38-1803.21. To the extent feasible, such assessments shall, at a minimum, be designed to provide information that permits comparisons between:

(i) Individual District of Columbia public schools and public charter schools; and

(ii) Individual students attending such schools.

(D) Model professional development programs for teachers using the standards and curriculum developed under subparagraphs (A) and (B) of this paragraph.

(2) *Special rule.* — The World Class Schools Task Force is encouraged, to the extent practicable, to develop districtwide assessments described in paragraph (1)(C) of this subsection that permit comparisons among:

(A) Individual District of Columbia public schools and public charter schools, and individual students attending such schools; and

(B) Students of other nations.

(c) *Content.* — The content standards and assessments recommended under subsection (b) of this section shall be judged by the World Class Schools Task Force to be world class, including having a level of quality and rigor, or being analogous to content standards and assessments of other States or nations (including nations whose students historically score high on international studies of student achievement).

(d) *Submission to Board of Education for adoption.* — If the content standards, curriculum, assessments, and programs recommended under subsection (b) of this section are approved by the Superintendent, the Superintendent may submit such content standards, curriculum, assessments, and programs to the Board of Education for adoption.

(Apr. 26, 1996, 110 Stat. 1321 [254], Pub. L. 104-134, § 2231.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1803.01, 38-1803.12, 38-1803.13, 38-1803.14, 38-1803.15, 38-1803.16, and 38-1803.55.

Prior Codifications. — 1981 Ed., § 31-2853.31.

§ 38-1803.12. Consultation.

The World Class Schools Task Force shall conduct its duties under this part in consultation with:

- (1) The District of Columbia Goals Panel;
- (2) Officials of the District of Columbia public schools who have been identified by the Superintendent as having responsibilities relevant to this part, including the Deputy Superintendent for Curriculum;
- (3) The District of Columbia community, with particular attention given to educators, and parent and business organizations; and
- (4) Any other persons or groups that the task force deems appropriate.

(Apr. 26, 1996, 110 Stat. 1321 [255], Pub. L. 104-134, § 2312.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1803.11, 38-1803.12, 38-1803.13, 38-1803.14, and 38-1803.15.

Prior Codifications. — 1981 Ed., § 31-2853.32.

§ 38-1803.13. Administrative provisions.

The World Class Schools Task Force shall ensure public access to its proceedings (other than proceedings, or portions of proceedings, relating to internal personnel and management matters) that are relevant to its duties under this subchapter and shall make available to the public, at reasonable cost, transcripts of such proceedings.

(Apr. 26, 1996, 110 Stat. 1321 255, Pub. L. 104-134, § 2313.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1803.11, 38-1803.12, 38-1803.13, 38-1803.14, and 38-1803.15.

Prior Codifications. — 1981 Ed., § 31-2853.33.

§ 38-1803.14. Consultants.

Upon the request of the World Class Schools Task Force, the head of any department or agency of the Federal Government may detail any of the personnel of such agency to such task force to assist such task force in carrying out such task force's duties under this subchapter.

(Apr. 26, 1996, 110 Stat. 1321 255, Pub. L. 104-134, § 2314.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1803.11, 38-1803.12, 38-1803.13, 38-1803.14, and 38-1803.15.

Prior Codifications. — 1981 Ed., § 31-2853.34.

§ 38-1803.15. Authorization of appropriations.

There are authorized to be appropriated \$2,000,000 for fiscal year 1997 to carry out this part. Such funds shall remain available until expended.

(Apr. 26, 1996, 110 Stat. 1321 256, Pub. L. 104-134, § 2315.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1803.11, 38-1803.12, 38-1803.13, 38-1803.14, and 38-1803.15.

Prior Codifications. — 1981 Ed., § 31-2853.35.

Subpart B—Promotion Gates.

§ 38-1803.21. Promotion gates.

(a) *Kindergarten through 4th grade.* — Not later than one year after the date of adoption in accordance with § 38-1803.11(d) of the assessments described in § 38-1803.11(b)(1)(C), the Superintendent shall establish and implement promotion gates for mathematics, reading, and writing, for not less than one grade level from kindergarten through grade 4, including at least grade 4, and shall establish dates for establishing such other promotion gates for other subject areas.

(b) *5th through 8th grades.* — Not later than one year after the adoption in accordance with § 38-1803.11(d) of the assessments described in § 38-1803.11(b)(1)(C), the Superintendent shall establish and implement promotion gates with respect to not less than one grade level from grade 5 through grade 8, including at least grade 8.

(c) *9th through 12th grades.* — Not later than one year after the adoption in accordance with § 38-1803.11(d) of the assessments described in § 38-1803.11(b)(1)(C), the Superintendent shall establish and implement promotion gates with respect to not less than one grade level from grade 9 through grade 12, including at least grade 12.

(Apr. 26, 1996, 110 Stat. 1321 [256], Pub. L. 104-134, § 2321.)

Section references. — This section is referred to in §§ 38-1800.01, 38-1803.11, 38-1803.12, 38-1803.13, 38-1803.14, and 38-1803.15.

Prior Codifications. — 1981 Ed., § 31-2853.36.

*Subchapter IV. Per Capita District of Columbia Public School
and Public Charter School Funding.*

§ 38-1804.01. Annual budgets for schools.

(a) *In general.* — For fiscal year 1997 and for each subsequent fiscal year, the Mayor shall make annual payments from the general fund of the District of Columbia in accordance with the formula established under subsection (b) of this section.

(b) *Formula.* —

(1) *In general.* — The Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, shall establish not later than 90 days after April 26, 1996, a formula to determine the amount of:

(A) The annual payment to the Board of Education for the operating expenses of the District of Columbia public schools, which for purposes of this paragraph includes the operating expenses of the Board of Education and the Office of the Superintendent; and

(B) The annual payment to each public charter school for the operating expenses of each public charter school.

(2) *Formula calculation.* — Except as provided in paragraph (3) of this subsection the amount of the annual payment under paragraph (1) of this subsection shall be calculated by multiplying a uniform dollar amount used in the formula established under such paragraph by:

(A) The number of students calculated under § 38-1804.02 that are enrolled at District of Columbia public schools, in the case of the payment under paragraph (1)(A) of this subsection; or

(B) The number of students calculated under § 38-1804.02 that are enrolled at each public charter school, in the case of a payment under paragraph (1)(B) of this subsection.

(3) *Exceptions.* —

(A) *Formula.* — Notwithstanding paragraph (2) of this subsection, the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, may adjust the formula to increase or decrease the amount of the annual payment to the District of Columbia public schools or each public charter school based on a calculation of:

(i) The number of students served by such schools in certain grade levels; and

(ii) The cost of educating students at such certain grade levels.

(B) *Payment.* — Notwithstanding paragraph (2) of this subsection, the State Superintendent of Education, with the advice and consent of the District of Columbia Council, may adjust the amount of the annual payment under paragraph (1) of this subsection to increase the amount of such payment if a District of Columbia public school or a public charter school serves a high number of students:

(i) With special needs;

(ii) Who do not meet minimum literacy standards; or

(iii) To whom the school provides room and board in a residential setting.

(C) *Adjustment for facilities costs.* — Notwithstanding paragraph (2) of this subsection, the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, shall adjust the amount of the annual payment under paragraph (1) of this subsection to increase the amount of such payment for a public charter school to take into account leases or purchases of, or improvements to, real property, if the school, not later than April 1 of the fiscal year preceding the payment, requests such an adjustment.

(D) Notwithstanding paragraph (2) of this subsection:

(i) The Office of the State Superintendent of Education shall develop a plan to address deficiencies in the current uniform per student funding formula assumptions funding students requiring an intensive program of special education services and to support improved services and the expanded availability of appropriate programs for these students in the public schools and public charter schools, including in self-contained and non- self-contained settings.

(ii) The OSSE shall study and recommend, prior to the beginning of school year 2007-2008, alternative approaches for funding such students that support the actual costs of services required by a student's Individual Education Plan.

(iii) The OSSE may provide supplemental funding, in accordance with the plan, in addition to the uniform per pupil funding formula amount to a special education school serving students in need of an intensive program of special education services who have been diagnosed as having one or more disabling conditions for which the students' Individual Educational Plans require services in a self-contained setting during the regular school day; provided, that the amount of the total per student funding shall not exceed the negotiated rate for education and related services approved for such students by the Maryland Department of Education.

(E) Notwithstanding paragraph (2) of this subsection, for fiscal year 2011, supplemental funding in addition to the supplemental allocations authorized by § 38-2905 may be provided to local education agencies ("LEAs") for special education services, including programs that increase the capacity of the LEA to provide special education services.

(c) The requirements to meet IDEA's Maintenance of Effort Obligation and Use of Formula Special Education Payments are as follows:

(1)(A) All public schools within the District of Columbia receiving Special Education Payments and federal grant funds under the Individuals with Disabilities Education Act ("IDEA"), must expend, in total or per capita, an equal or greater amount of its non-federal, District funds on allowable special education costs each subsequent fiscal year as required by 34 CFR § 300.203 "Maintenance of effort", except as provided in 34 CFR § 300.204 "Exception to maintenance of effort", and 34 CFR § 300.205 "Adjustment to local fiscal efforts in certain fiscal years".

(B) This requirement applies to the District of Columbia Public Schools

("DCPS") and all public charter schools regardless of whether they have elected DCPS as their LEA for special education purposes.

(C) Special education attorney fee expenditures made pursuant to 34 CFR § 300.517 shall not be included in the IDEA Maintenance of Effort calculation for DCPS or public charter schools.

(D) If it is determined at any point, that DCPS or a public charter school has failed to maintain level of effort for expenditures made with non-federal, District funds for special education as defined in 34 CFR § 300.203-205 of IDEA, the District shall withhold an amount equal to the difference from the school's next scheduled Formula base payment. In no case shall such withholding be taken from Special Education Payments made to the school in any fiscal year.

(E) If a public charter school relinquishes its charter or if a final decision is made by the eligible chartering authority to revoke the charter as described in § 38-1802.13, the public charter school shall refund to OSSE the unexpended amount of the Special Education Payment necessary to ensure compliance with 34 CFR § 300.203. In no case shall federal funds, for which accountability to the federal government is required, be used to pay this liability.

(2) Expenditure of Special Education Payments by public schools are restricted for use in accordance with allowable special education costs unless an [a] LEA is in compliance with 34 CFR § 300.203 and has received an Annual Determination as required by 34 CFR § 300.600(a) of "Meets Requirements" for the most recent year for which this information is available.

(3) Expenditures for attorney fees related to IDEA due process hearings pursuant to 34 CFR § 300.517 may not be paid from Special Education Payments; except that such fees may be paid from funds received under the Special Education Compliance Fund. Nothing in this section shall prohibit a public school from paying for attorney fees from other non-special education portions of its Formula payments.

(4) All Special Education Payments must be expended within the fiscal year within which they were appropriated, unless the LEA is in compliance with the IDEA maintenance of effort requirements in 34 CFR § 300.203 and received an Annual Determination of "Meets Requirements" under 34 CFR § 300.600(a).

(5)(A) If DCPS or a public charter school does not have an Annual Determination of "Meets Requirements" and fails to expend in its entirety Special Education Payments on allowable special education costs within the fiscal year within which the funds are appropriated, the public school must reserve the full amount of unspent funds. The reserved funds shall be expended pursuant to a Corrective Action Plan approved by OSSE.

(B) If DCPS or a public charter school fails to comply with the requirements of this paragraph, the District shall withhold an amount equal to the unspent portion of such funds from the school's next scheduled Formula base payment. In no case shall such withholding be taken from Special Education Payments made to the school in any fiscal year.

(d) DCPS and public charter schools shall provide to OSSE, at least

annually, a certified report of all expenditures made with Special Education Payments for each fiscal year.

(e) OSSE shall issue guidance to clarify reporting requirements for the purpose of determining whether DCPS and each public charter school have:

(1) Expended Special Education Payments on allowable special education costs as required by this section;

(2) Made expenditures for attorney fees related to IDEA due process hearings pursuant to 34 CFR § 300.517 in accordance with subsection (c)(3) of this section; and

(3) Complied with federal IDEA Maintenance of Effort requirements.

(f) The OSSE, utilizing official budget and expenditure data provided by the Office of the Chief Financial Officer, shall monitor the DCPS and public charter schools for compliance with the requirements in this section.

(g) DCPS and public charter schools shall adhere to monitoring policies issued by OSSE pursuant to this section.

(h) In the event the distribution of a Formula payment is delayed to DCPS or a public charter school, the school shall receive additional time to expend the distribution based upon the difference in the number of days between the scheduled distribution date and the actual distribution date of funds to DCPS or the public charter school.

(i) For the purposes of this section, the term:

(1) "Allowable special education costs" shall have the same meaning as provided in § 38-2901(1A).

(2) "Special Education Compliance Fund" shall have the same meaning as provided in § 38-2901(11B).

(3) "Special Education Payment" shall have the same meaning as provided in § 38-2901(11C).

(Apr. 26, 1996, 110 Stat. 1321 [256], Pub. L. 104-134, § 2401; Nov. 19, 1997, 111 Stat. 2191, Pub. L. 105-100, §§ 170, 171; Sept. 18, 2007, D.C. Law 17-20, § 4032(c), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 4002, 55 DCR 7598; Apr. 8, 2011, D.C. Law 18-370, § 403(a), 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 4002, 58 DCR 6226.)

Cross references. — "Per student funding formulae" defined, see § 38-2901.

Supplement to foundation level funding on the basis of the count of special education, etc., see § 38-2905.

Section references. — This section is referred to in §§ 38-1804.03 and 38-2901.

Prior Codifications. — 1981 Ed., § 31-2853.41.

Effect of amendments. — D.C. Law 17-20, in subsec. (b)(3), added subpar. (D).

D.C. Law 17-219, in subsec. (b)(3)(B), substituted "the State Superintendent of Education, with the advice and consent of the District of Columbia Council," for "the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent,".

D.C. Law 18-370 added subsec. (b)(3)(E).

D.C. Law 19-21 added subsecs. (c) to (i).

Emergency legislation. — For temporary (90 day) amendment of section, see § 4032(d) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 403(a) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 4002 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Legislative history of Law 18-370. — For

history of Law 18-370, see notes under § 38-821.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

Short title. — Short title: Section 4001 of D.C. Law 17-219 provided that subtitle A of title IV of the act may be cited as the “Supplemental Education Payments Amendment Act of 2008”.

Short title: Section 4001 of D.C. Law 19-21 provided that subtitle A of title IV of the act may be cited as “Funding for Public Schools and Public Charter Schools Amendment Act of 2011”.

Resolutions. — Resolution 16-864, the “St. Coletta Special Education Charter School Annual Payment Adjustment Emergency Approval Resolution of 2006”, was approved effective November 14, 2006.

Resolution 17-427, the “St. Coletta Special Education Public Charter School Summer Payment Adjustment Emergency Approval Resolution of 2007”, was approved effective November 6, 2007.

Resolution 17-465, the “Public Charter School Supplemental Funding for Special Needs Services Annual Payment Adjustment Emergency Approval Resolution of 2007”, was approved effective December 11, 2007.

Editor’s notes. — Approval of a Fiscal Year 1997 Uniform Per Student Funding Formula for Public Schools Emergency Resolution of 1996: Pursuant to Resolution 11-441, effective July 3, 1996, Council approved, on an emergency basis, a uniform per student funding formula to determine the Fiscal Year 1997 annual payment to the Board of Education for public schools under its control and annual payment to public charter schools.

§ 38-1804.02. Calculation of number of students.

(a) *Quarterly reporting requirement.* — On June 30, October 15, December 15, and March 30 of each year the District of Columbia public schools and each eligible chartering authority shall submit a report to the Mayor and the Council containing the information described in subsection (b) of this section that is applicable to the schools under their respective authorities.

(b) *Calculation of number of students.* — Not later than 30 days after April 26, 1996, and not later than October 15 of each year thereafter, the Office of the State Superintendent of Education shall calculate the following:

(1) The number of students, including nonresident students and students with special needs, enrolled in each grade from kindergarten through grade 12 of the District of Columbia public schools and in public charter schools, and the number of students whose tuition for enrollment in other schools is paid for with funds available to the District of Columbia public schools;

(2) The amount of fees and tuition assessed and collected from the nonresident students described in paragraph (1) of this subsection;

(3) The number of students, including nonresident students, enrolled in preschool and prekindergarten in the District of Columbia public schools and in public charter schools;

(4) The amount of fees and tuition assessed and collected from the nonresident students described in paragraph (3) of this subsection;

(5) The number of full time equivalent adult students enrolled in adult, community, continuing, and vocational education programs in the District of Columbia public schools and in public charter schools;

(6) The amount of fees and tuition assessed and collected from resident and nonresident adult students described in paragraph (5) of this subsection;

(7) The number of students, including nonresident students, enrolled in nongrade level programs in District of Columbia public schools and in public charter schools;

(8) The amount of fees and tuition assessed and collected from nonresident students described in paragraph (7) of this subsection; and

(9) The number of enrolled students who have dropped out since the date of the previous report.

(c) *Annual reports.* — Not later than October 30 of each year the Mayor shall prepare and submit to the Authority (during a control year), the Council, the Comptroller General of the United States, and the appropriate congressional committees a report containing a summary of the calculations made pursuant to subsection (b) of this subsection, including the 4 immediately prior reporting periods specified in subsection (a) of this section.

(d) *Audit of initial calculations.* —

(1) *In general.* — The Office of the State Superintendent of Education shall provide for the conduct of an independent audit of the initial calculations described in subsection (b) of this subsection.

(2) *Conduct of audit.* — In conducting the audit, the independent auditor:

(A) Shall provide an opinion as to the accuracy of the information contained in the report described in subsection (c) of this subsection; and

(B) Shall identify any material weaknesses in the systems, procedures, or methodology used by the Office of the State Superintendent of Education:

(i) In determining the number of students, including nonresident students, enrolled in the District of Columbia public schools and in public charter schools, and the number of students whose tuition for enrollment in other school systems is paid for by funds available to the District of Columbia public schools; and

(ii) In assessing and collecting fees and tuition from nonresident students.

(3) *Submission of audit.* — Not later than 60 days after the date on which the Council receives the initial annual report from the Office of the State Superintendent of Education required under subsection (c) of this subsection, the Office of the State Superintendent of Education shall submit to the Mayor, the Council, and the appropriate congressional committees, the audit conducted pursuant to this subsection.

(4) *Cost of the audit.* — The Office of the State Superintendent of Education shall fund the independent audit solely from amounts appropriated to the Office of the State Superintendent of Education for staff, stipends, and non-personal services of the Office of the State Superintendent of Education by an act making appropriations for the District of Columbia.

(Apr. 26, 1996, 110 Stat. 1321 [257], Pub. L. 104-134, § 2402; Oct. 21, 2000, D.C. Law 13-176, § 8(c), 47 DCR 6835; Apr. 13, 2005, D.C. Law 15-348, § 102(b), 52 DCR 1991; Sept. 24, 2010, D.C. Law 18-223, § 4092, 57 DCR 6242.)

Cross references. — Applicability of Formula, see § 38-2902.

Section references. — This section is referred to in §§ 38-1804.01 and 38-1804.03.

Prior Codifications. — 1981 Ed., § 31-2853.42.

Effect of amendments. — D.C. Law 13-176 provided for substitution of reference to state

education office for board of education where appearing.

D.C. Law 15-348 rewrote subsecs. (a) and (c).

D.C. Law 18-223, in subsec. (a), substituted “the Mayor and the Council containing” for “Mayor containing” and substituted “authorities” for “authorities; provided, that in the case of the June 30 report, the information submit-

ted by each eligible chartering authority shall be in the form of estimates of the number of students who will fall into each category on the following October 5"; in subsec. (b), substituted "Office of the State Superintendent of Education" for "State Education Office" in the lead-in language, deleted "and" from the end of par. (7); substituted "; and" for a period at the end of par. (8), and added par. (9); and, in subsec. (d), substituted "Office of the State Superintendent of Education shall" for "State Education Office shall arrange with the Authority to" in par. (1), substituted "Office of the State Superintendent of Education" for "State Education Office" in par. (2)(B), and rewrote pars. (3) and (4) of subsec. (d).

Temporary Amendment of Section. — Section 3(b) of D.C. Laws 13-427 rewrote subsecs. (a) and (c); in subsec. (b) substituted "The reports described in subsection (a) of this section shall contain the following information:" for "Calculation of the number of students not later than 30 days after April 26, 1996, and not later than October 15, of each years thereafter, the Board shall calculate the following:"; and repealed subsec. (d). Subsecs. (a) and (c), as amended, read as follows:

"(a) Quarterly reporting requirement.—On June 30, October 15, December 15, and March 30 of each year the District of Columbia public schools and each eligible chartering authority shall submit a report to the Mayor containing the information described in subsection (b) of this section that is applicable to their schools; provided, however, that in the case of the June 30 report the information submitted by each eligible chartering authority shall be in the form of estimates of the number of students who will fall into each category on the following October 5."

"(c) Annual reports.—Not later than October 30 of each year the Mayor shall prepare and submit to the Authority, the Council, the Comptroller General of the United States, and the appropriate congressional committees a report containing a summary of the calculations made pursuant to subsection (b) of this subsection, including the four immediately prior reporting periods specified in subsection (a) of this section."

Section 6(b) of D.C. Laws 13-199 provided that the act shall expire after 225 days of its having taken effect.

Section 3(b)(1) of D.C. Law 14-38 amended subsec. (a) to read as follows:

"(a) Quarterly reporting requirement. — On June 30, October 15, December 15, and March 30 of each year the District of Columbia public schools and each eligible chartering authority shall submit a report to the Mayor containing the information described in subsection (b) of this section that is applicable to their schools; provided, however, that in the case of the June

30 report the information submitted by each eligible chartering authority shall be in the form of estimates of the number of students who will fall into each category on the following October 5."

Section 3(b)(2) of D.C. Law 14-38 amended subsec. (b) by striking the phrase following "Calculation of the number of students not later than 30 days after April 26, 1996, and not later than October 15, of each years thereafter, the Board shall calculate the following:" and inserting the phrase "The reports described in subsection (a) of this section shall contain the following information:" in its place.

Section 3(b)(3) of D.C. Law 14-38 amended subsec. (c) to read as follows:

"(c) Annual reports. — Not later than October 30 of each year the Mayor shall prepare and submit to the Authority, the Council, the Comptroller General of the United States, and the appropriate congressional committees a report containing a summary of the calculations made pursuant to subsection (b) of this subsection, including the four immediately prior reporting periods specified in subsection (a) of this section."

Section 3(b)(4) of D.C. Law 14-38 repealed subsec. (d).

Section 6(b) of D.C. Law 14-38 provided that the act shall expire after 225 days of its having taken effect.

Section 3(b) of D.C. Law 15-67 rewrote subsecs. (a) and (c); in subsec. (b), substituted "Information required. — The reports described in subsection (a) of this section shall contain the following information:" for "Calculation of the number of students. — Not later than 30 days after April 26, 1996, and not later than October 15, of each year thereafter, the State Education Office shall calculate the following:"; and repealed subsec. (d). Subsecs. (a) and (c) read as follows:

"(a) Quarterly reporting requirement. — On June 30, October 15, December 15, and March 30 of each year the District of Columbia public schools and each eligible chartering authority shall submit a report to the Mayor containing the information described in subsection (b) of this section that is applicable to their schools; provided, however, that in the case of the June 30 report, the information submitted by each eligible chartering authority shall be in the form of estimates of the number of students who will fall into each category on the following October 5."

"(c) Annual reports. — Not later than October 30 of each year the Mayor shall prepare and submit to the Authority (during a control year), the Council, the Comptroller General of the United States, and the appropriate congressional committees a report containing a summary of the calculations made pursuant to subsection (b) of this subsection, including the four imme-

diately prior reporting periods specified in subsection (a) of this section.”

Section 6(b) of D.C. Law 15-67 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) provisions governing the hiring of an independent contractor to perform a census of enrolled students and employees in public schools, see § 402 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90 day) amendment of section, see § 3(b) of the Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-453, November 7, 2000, 47 DCR 9406).

For temporary (90 day) amendment of section, see § 3(b) of Public School Enrollment Integrity Emergency Amendment Act of 2001 (D.C. Act 14-86, July 9, 2001, 48 DCR 6373).

For temporary (90 day) amendment of section, see § 3(b) of Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-192, November 29, 2001, 48 DCR 11239).

For temporary (90 day) amendment of section, see § 3(b) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2003 (D.C. Act 15-174, October 6, 2003, 50 DCR 9181).

For temporary (90 day) amendment of section, see § 3(b) of Public School Enrollment Integrity Clarification Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-282, December 18, 2003, 51 DCR 191).

For temporary (90 day) amendment of section, see § 3(b) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2004 (D.C. Act 15-519, August 2, 2004, 51 DCR 8995).

For temporary (90 day) amendment of section, see § 4092 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 13-176. — For D.C. Law 13-176, see notes following § 38-302.

Legislative history of Law 14-38. — For Law 14-38, see notes following § 38-1800.02.

Legislative history of Law 15-67. — For Law 15-67, see notes following § 38-1800.02.

Legislative history of Law 15-348. — For Law 15-348, see notes following § 38-1800.02.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Short title. — Short title: Section 4091 of D.C. Law 18-223 provided that subtitle J of title IV of the act may be cited as the “Per Capita District of Columbia Public School and Public Charter School Funding Amendment Act of 2010”.

§ 38-1804.03. Payments.

(a) *In general.* —

(1) *Escrow for public charter schools.* — Except as provided in subsection (b) of this section, for any fiscal year, not later than 10 days after the date of enactment of an act making appropriations for the District of Columbia for such fiscal year, the Mayor shall place in escrow an amount equal to the aggregate of the amounts determined under § 38-1804.01(b)(1)(B) for use only by District of Columbia public charter schools.

(2) *Transfer of escrow funds.* —

(A) *Initial payment.* —

(i) *In general.* — Except as provided in sub-subparagraphs (ii) and (iii) of this subparagraph, no later than July 15, October 15, January 15, and April 15 of each year, the Mayor shall transfer, by electronic funds transfer, the quarterly payments for each public charter school as prescribed in § 38-2906.02 to a bank designated by such school.

(ii) *Reduction in case of a new school.* — In the case of a public charter school that has received a payment pursuant to subsection (b) of this section in the fiscal year immediately preceding the fiscal year in which a transfer pursuant to sub-subparagraph (i) of this subparagraph is made, the amounts transferred to the school under sub-subparagraph (i) of this subparagraph shall be reduced by an amount equal to 25% of the amount of the payment made pursuant to subsection (b) of this section.

(iii) Funds received from the Education Jobs Fund, established by section 101 of An Act To modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provides for modernization of the air traffic control system, reauthorizes the Federal Aviation Administration, and for other purposes, approved August 10, 2010 (Pub. L. No.111-226; 124 Stat. 2389) (“Act”), shall be disbursed to public charter schools at such times as are consistent with the requirements of the Act, its implementing regulations, and other applicable federal regulations.

(B) Repealed.

(C) *Pro rata reduction or increase in payments.* —

(i) *Pro rata reduction.* — If the funds made available to the District of Columbia Government for the District of Columbia public school system and each public charter school for any fiscal year are insufficient to pay the full amount that such system and each public charter school is eligible to receive under this subchapter for such year, the Mayor shall ratably reduce such amounts for such year on the basis of the formula described in § 38-1804.01(b).

(ii) *Increase.* — If additional funds become available for making payments under this subchapter for such fiscal year, amounts that were reduced under subparagraph (A) of this paragraph shall be increased on the same basis as such amounts were reduced.

(D) *Unexpended funds.* — Any funds that remain in the escrow account for public charter schools on September 30 of a fiscal year shall revert to the general fund of the District of Columbia.

(b) *Payments to public schools and public charter schools.* —

(1) *Establishment of fund.* — The fund previously established in the General Fund of the District of Columbia as the “Charter School Fund” shall be redesignated the Student Enrollment Fund. Amounts deposited in the Student Enrollment Fund shall be available for expenditure without further appropriation and shall remain available until expended for the purposes described in paragraph (3) of this subsection. Amounts remaining unobligated or unexpended at the end of a fiscal year shall not revert to the General Fund of the District of Columbia.

(2) *Contents of fund.* — The Student Enrollment Fund shall consist of:

(A) Unexpended and unobligated amounts appropriated from local funds for public charter schools for each fiscal year that reverted to the General Fund of the District of Columbia, together with any other local funds that the Chief Financial Officer certifies are necessary to effect the purposes of the fund during the fiscal year; provided, that the amount of funds deposited shall not exceed \$8 million in any fiscal year; and

(B) Any interest earned on such amounts.

(3) *Purposes of fund.* — The Student Enrollment Fund shall be used to assist public schools and public charter schools in the District of Columbia by providing funding in cases where the total audited enrollment, including enrollment in special needs categories, exceeds the projected student enrollment on which the annual appropriation is based in that fiscal year.

(4) *Expenditures from fund.* —

(A) Expenditures from the Student Enrollment Fund for enrollment in excess of the annual public charter school projection for any public charter

school operating in that fiscal year shall be authorized in cases where the total audited actual enrollment, including enrollment in special needs categories, exceeds the projected student enrollment on which the annual appropriation is based in that fiscal year.

(B) Expenditures from the Student Enrollment Fund for enrollment in excess of annual public school projections shall be authorized in cases where the total audited actual enrollment exceeds that of the student enrollment on which the annual appropriation is based in that fiscal year.

(5) *Form of payment.* — Payments under this subsection shall be made by electronic funds transfer from the Student Enrollment Fund to a bank designated by a public charter school.

(6) *Authorization of appropriations.* — There are authorized to be appropriated to the Chief Financial Officer such sums as may be necessary to effect the purposes of this subsection for each fiscal year.

(c) *Assignment of payments.* — A public charter school may assign any payments made to the school under this section to a financial institution for use as collateral to secure a loan or for the repayment of a loan.

(Apr. 26, 1996, 110 Stat. 1321 [259], Pub. L. 104-134, § 2403; Nov. 19, 1997, 111 Stat. 2191, Pub. L. 105-100, § 172; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 120(d); Feb. 20, 2003, 117 Stat. 132, Pub. L. 108-7, Div. C, title III, § 146(a); Oct. 18, 2004, 118 Stat. 1347, Pub. L. 108-335, § 335(a), (b); Apr. 13, 2005, D.C. Law 15-348, § 102(c)(1), 52 DCR 1991; Mar. 2, 2007, D.C. Law 16-191, § 59, 53 DCR 6794; Sept. 18, 2007, D.C. Law 17-20, § 4032(d), 54 DCR 7052; Apr. 8, 2011, D.C. Law 18-370, § 403(b), 58 DCR 1008.)

Section references. — This section is referred to in §§ 38-1804.01, 38-1804.02 and 38-2905.

Prior Codifications. — 1981 Ed., § 31-2853.43.

Effect of amendments. — Section 120 (d) of Public Law 106-522 added subsec. (c) providing for assignment of payments.

Section 146(a) of Public Law 108-7 rewrote subsec. (b).

Pub. L. 108-335, in subsec. (b)(1), added at the end “Amounts in the Charter School Fund shall remain available until expended, and any amounts in the Fund remaining unobligated or unexpended at the end of a fiscal year shall not revert to the General Fund of the District of Columbia.”; and in subsec. (b)(2)(A), inserted after “District of Columbia”, “together with any other local funds that the Chief Financial Officer of the District of Columbia certifies are necessary to carry out the purposes of the Fund during the fiscal year.”.

D.C. Law 15-348, in subsec. (a)(2), rewrote subpar. (A) and repealed subpar. (B).

D.C. Law 16-191 repealed D.C. Law 15-348, § 102(c)(2), which resulted in no change in text.

D.C. Law 17-20 rewrote subsec. (b).

D.C. Law 18-370, in subsec. (a)(2)(A), substituted “sub-subparagraphs (ii) and (iii)” for “sub-

subparagraph (ii)” in sub-subparagraph (i), and added sub-subparagraph (iii).

Temporary Amendment of Section. — Section 3(c) of D.C. Laws 13-427 added subsec. (c) to read as follows:

“(c) Annual reports.—Not later than October 30 of each year the Mayor shall prepare and submit to the Authority, the Council, the Comptroller General of the United States, and the appropriate congressional committees a report containing a summary of the calculations made pursuant to subsection (b) of this subsection, including the four immediately prior reporting periods specified in subsection (a) of this section.”.

Section 6(b) of D.C. Laws 13-427 provided that the act shall expire after 225 days of its having taken effect.

Section 3(c)(1)(A), 3(c)(2)(A), and 3(c)(2)(B) of D.C. Law 14-38 rewrote subpars. (a)(2)(A)(i) and (ii), par. (b)(4) and subpar. (b)(5)(B) to read as follows respectively:

“(i) In General.—Except as provided in sub-subparagraph (ii) of this subparagraph, no later than July 15, October 15, January 15, and April 15 of each year, the Mayor shall transfer, by electronic funds transfer, the quarterly payments for each public charter school as prescribed in section 107a of the Uniform Per

Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, effective March 26, 1999 (D.C. Law 12-207; D.C. Official Code § 38-2906(a)), to a bank designated by such school.

“(ii) Reduction in case of a new school.—In the case of a public charter school that has received a payment pursuant to subsection (b) of this section in the fiscal year immediately preceding the fiscal year in which a transfer pursuant to sub-subparagraph (i) of this subparagraph is made, the amounts transferred to the school under sub-subparagraph (i) of this paragraph shall be reduced by an amount equal to 25% of the amount of the payment pursuant to subsection (b) of this section.”.

“(4) Credits to fund.—Upon the receipt of each of its payments pursuant to subsection (a)(2)(A) of this section by a public charter school described in paragraph (5) of this subsection, the Chief Financial Officer of the District of Columbia shall credit the New Charter School Fund with 25 % of the amount paid to the school pursuant to paragraph (3) of this subsection.”.

“(B) Has had its petition to establish a public charter school approved pursuant to section 2203 of this Act and is scheduled to begin operation as a public charter school in the fiscal year for which funds are appropriated to carry out the provisions of this subsection.”.

Section 3(c)(3) of D.C. Law 14-38 added a new subsec. (c) to read as follows:

“(c) Additional payment to New Schools. — Until the first day of the fiscal year shall be changed to July 1, the amount of payment to a public charter school described in subsection (b)(5)(B) of this section, shall be increased by $\frac{1}{2}$ of the total dollar amount to which the public charter school is entitled for the fiscal year based on its unaudited October 5 enrollment.”.

Section 3(c)(1)(B) of D.C. Law 14-38 repealed par. (a)(2)(B).

Section 6(b) of D.C. Law 14-38 provided that the act shall expire after 225 days of its having taken effect.

Section 3(c) of D.C. Law 15-67, in subsec. (a)(2), rewrote subpar. (A), and repealed subpar. (B); in subsec. (b), rewrote pars. (4) and (5)(B); and added subsec. (d). Subpar. (A) of subsec. (a)(2), pars. (4) and (5)(B) of subsec. (b), and subsec. (d) read as follows:

“(A) Initial payment. —

“(i) In General. — Except as provided in sub-subparagraph (ii) of this subparagraph, no later than July 15, October 15, January 15, and April 15 of each year, the Mayor shall transfer, by electronic funds transfer, the quarterly payments for each public charter school as prescribed in section 107a of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, passed

by the Council on an emergency basis on September 16, 2003 (Enrolled version of Bill 15-431), to a bank designated by such school.

“(ii) Reduction in case of a new school. — In the case of a public charter school that has received a payment pursuant to subsection (b) of this section in the fiscal year immediately preceding the fiscal year in which a transfer pursuant to sub-subparagraph (i) of this subparagraph is made, the amounts transferred to the school under sub-subparagraph (i) of this subparagraph shall be reduced by an amount equal to 25% of the amount of the payment made pursuant to subsection (b) of this section.”.

“(4) Credits to fund. — Upon the receipt of each of its payments pursuant to subsection (a)(2)(A) of this section by a public charter school described in paragraph (5) of this subsection, the Chief Financial Officer of the District of Columbia shall credit the New Charter School Fund with 25% of the amount paid to the school pursuant to paragraph (3) of this subsection.”.

“(B) Has had its petition to establish a public charter school approved pursuant to section 2203 and is scheduled to begin operation as a public charter school in the fiscal year for which funds are appropriated to carry out the provisions of this subsection.”.

“(d) Additional payment to new schools. — Until section 441 of the District of Columbia Home Rule Act is amended to establish the first day of the fiscal year for D.C. Public Schools and Public Charter Schools as July 1, the amount of payment to a public charter school described in subsection (b)(5)(B) of this section, shall be increased by $\frac{1}{2}$ of the total dollar amount to which the public charter school is entitled for the fiscal year based on its unaudited October 5 enrollment.”.

Section 6(b) of D.C. Law 15-67 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 3(c) of the Public School Enrollment Integrity Emergency Amendment Act of 2000 (D.C. Act 13-409, August 14, 2000, 47 DCR 7264).

For temporary (90 day) amendment of section, see § 3(c) of the Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-453, November 7, 2000, 47 DCR 9406).

For temporary (90 day) amendment of section, see § 3(c) of Public School Enrollment Integrity Emergency Amendment Act of 2001 (D.C. Act 14-86, July 9, 2001, 48 DCR 6373).

For temporary (90 day) amendment of section, see § 3(c) of Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-192, November 29, 2001, 48 DCR 11239).

For temporary (90 day) amendment of section, see § 3(c) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2003 (D.C. Act 15-174, October 6, 2003, 50 DCR 9181).

For temporary (90 day) amendment of section, see § 3(c) of Public School Enrollment Integrity Clarification Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-282, December 18, 2003, 51 DCR 191).

For temporary (90 day) amendment of section, see § 3(c) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2004 (D.C. Act 15-519, August 2, 2004, 51 DCR 8995).

For temporary (90 day) amendment of section, see § 4032(e) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 403(b) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 14-38. — For Law 14-38, see notes following § 38-1800.02.

Legislative history of Law 15-67. — For Law 15-67, see notes following § 38-1800.02.

Legislative history of Law 15-348. — For Law 15-348, see notes following § 38-1800.02.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 38-1202.01.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 38-821.02.

Editor's notes. — Section 102(c)(2) of D.C. Law 15-348 purported to amend this section. Those amendments were not given effect due to the prior amendments by Pub. L. 108-7.

Section 146(b) of Pub. L. 108-7 provided:

“(b) Notwithstanding any other provision of law, \$5,000,000 from the Charter School Fund established pursuant to section 2403(b) of the District of Columbia School Reform Act of 1995 (D.C. Official Code, sec. 38-1804.03(b)), as amended by subsection (a), shall be deposited not later than 15 days after the date of the enactment of this Act into the credit enhancement revolving fund established pursuant to section 603(e) of the Student Loan Marketing Association Reorganization Act of 1996 (20 U.S.C. 1155(e)).”

Section 335(c) of Pub. L. 108-335 provided that the amendments made by this section shall apply with respect to fiscal year 2005 and each succeeding fiscal year.

Section 827 of Pub. L. 110-161, Dec. 26, 2007, 121 Stat. 2042, provided:

“In fiscal year 2008 and thereafter, amounts deposited in the Student Enrollment Fund shall be available for expenditure upon deposit and shall remain available until expended consistent with the terms detailed in ‘The Student Funding Formula Assessment, Educational Data Warehouse, and Enrollment Fund Establishment Amendment Act of 2007’ (title IV-D of D.C. Law 17-0020) and the entire provisions of that Act are incorporated herein by reference.”

Subchapter V. School Facilities Repair and Improvement.

Subpart A—School Facilities.

§ 38-1805.50. Definitions.

For purposes of this subchapter —

(1) The term “facilities” means buildings, structures, and real property of the District of Columbia public schools, except that such term does not include any administrative office building that is not located in a building containing classrooms; and

(2) The term “repair and improvement” includes administration, construction, and renovation.

(Apr. 26, 1996, 110 Stat. 1321 [261], Pub. L. 104-134, § 2550.)

Section references. — This section is referred to in § 38-1805.51.

Prior Codifications. — 1981 Ed., § 31-2853.50.

§ 38-1805.51. Technical assistance. [Repealed].

Repealed.

(Apr. 26, 1996, 110 Stat. 1321 [262], Pub. L. 104-134, § 2551; June 8, 2006, D.C. Law 16-123, § 222(a), 53 DCR 2843.)

Prior Codifications. — 1981 Ed., § 31-2853.51.

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

§ 38-1805.52. Facilities Master Plan.

In developing the Facilities Master Plan pursuant to § 38-2803, the Mayor shall consult with the Council, the Director of the Office of Public Education Facilities Modernization, the Public Charter School Board, representatives of public charter schools, and the Public School Modernization Advisory Committee, and shall consider the facilities needs of all public school students.

(Apr. 26, 1996, 110 Stat. 1321 [263], Pub. L. 104-134, § 2552; Nov. 13, 2003, D.C. Law 15-39, § 322, 50 DCR 5668; June 8, 2006, D.C. Law 16-123, § 222(b), 53 DCR 2843; June 12, 2007, D.C. Law 17-9, § 802(g), 54 DCR 4102.)

Section references. — This section is referred to in §§ 38-1805.50 and 38-1805.51.

Prior Codifications. — 1981 Ed., § 31-2853.52.

Effect of amendments. — D.C. Law 15-39 rewrote subsec. (a)(1).

D.C. Law 16-123 rewrote section.

D.C. Law 17-9 substituted “Mayor shall consult with the Council, the Director of the Office of Public Education Facilities Modernization,” for “Superintendent and Board of Education shall consult with the Mayor, the Council”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 322 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 322 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) repeal of section 804 of D.C. Law 17-9, see § 4043(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Short title. — Short title of subtitle C of title III of Law 15-39: Section 321 of D.C. Law 15-39 provided that subtitle C of title III of the act may be cited as the Public Schools Facilities Master Plan Amendment Act of 2003.

Editor’s notes. — Applicability: Section 804 of D.C. Law 17-9 provided that section 802 shall apply upon enactment by Congress. Section 804 of D.C. Law 17-9 was repealed by section 4043(b) of D.C. Law 17-20.

Establishment of Process and Time Deadlines for the Program to Revitalize Public Schools Resolution of 1996: Pursuant to Resolution 11-629, effective December 3, 1996, Council established a process and time deadline for development of a program designed to provide for the repair and improvement, and the maintenance and management of District of Columbia public school facilities, and to designate an agency or authority to administer the program.

Subpart B—Waivers.

§ 38-1805.61. Waivers.

(a) *In general.* —

(1) *Requirements waived.* — Subject to subsection (b) of this section, all District of Columbia fees and all requirements contained in the document entitled “District of Columbia Public Schools Standard Contract Provisions” (as such document was in effect on November 2, 1995 and including any revisions or modifications to such document) published by the District of

Columbia public schools for use with construction or maintenance projects, are waived, for purposes of repair and improvement of District of Columbia public schools facilities for a period beginning on April 26, 1996, and ending 24 months after such date.

(2) *Donations.* — Any individual may volunteer his or her services or may donate materials to a District of Columbia public school facility for the repair and improvement of such facility provided that the provision of voluntary services meets the requirements of 29 U.S.C. 203(e)(4).

(b) *Limitation.* — A waiver under subsection (a) of this section shall not apply to the Davis-Bacon Act (40 U.S.C. 276a et seq.) [revised, now see 40 U.S.C. 3142] or Executive Order 11246 or other civil rights standards.

(Apr. 26, 1996, 110 Stat. 1321 263, Pub. L. 104-134, § 2552; Sept. 9, 1996, 110 Stat. 2356 2377, Pub. L. 104-194, § 148; Sept. 30, 1996, 110 Stat. 3009 1473, Pub. L. 104-208, § 5205(h).)

Section references. — This section is referred to in §§ 38-1805.50 and 38-1805.51.

Prior Codifications. — 1981 Ed., § 31-2853.53.

Subpart C—Gifts, Donations, Bequests, and Devises.

§ 38-1805.71. Gifts, donations, bequests, and devises.

(a) *In general.* — A District of Columbia public school or a public charter school may accept directly from any person a gift, donation, bequest, or devise of any property, real or personal, without regard to any law or regulation of the District of Columbia.

(b) *Tax laws.* — For the purposes of the income tax, gift tax, and estate tax laws of the Federal Government, any money or other property given, donated, bequeathed, or devised to a District of Columbia public school or a public charter school, shall be deemed to have been given, donated, bequeathed, or devised to or for the use of the District of Columbia.

(Apr. 26, 1996, 110 Stat. 1321 [264], Pub. L. 104-134, § 2571.)

Section references. — This section is referred to in §§ 38-1805.50 and 38-1805.51.

Prior Codifications. — 1981 Ed., § 31-2853.54.

Subchapter VI. Partnerships with Business.

§ 38-1806.01. Purpose.

The purpose of this subchapter is:

(1) To leverage private sector funds utilizing initial Federal investments in order to provide students and teachers within the District of Columbia public schools and public charter schools with access to state-of-the-art educational technology;

(2) To establish a regional job training and employment center;

(3) To strengthen workforce preparation initiatives for students within the District of Columbia public schools and public charter schools;

(4) To coordinate private sector investments in carrying out this chapter; and

(5) To assist the Superintendent with the development of individual career paths in accordance with the long-term reform plan.

(Apr. 26, 1996, 110 Stat. 1321 [264], Pub. L. 104-134, § 2601.)

Section references. — This section is referred to in §§ 38-1806.04, and 38-1806.05.

Prior Codifications. — 1981 Ed., § 31-2853.61.

§ 38-1806.02. Duties of the Superintendent of the District of Columbia public schools.

The Superintendent is authorized to provide a grant to a private, nonprofit corporation that meets the eligibility criteria under § 38-1806.03 for the purposes of carrying out the duties under §§ 38-1806.04 and 38-1806.07.

(Apr. 26, 1996, 110 Stat. 1321 [265], Pub. L. 104-134, § 2602.)

Section references. — This section is referred to in §§ 38-1806.01, 38-1806.03, 38-1806.04, 38-1806.05, and 38-1806.09.

Prior Codifications. — 1981 Ed., § 31-2853.62.

§ 38-1806.03. Eligibility criteria for private, nonprofit corporation.

A private, nonprofit corporation shall be eligible to receive a grant under § 38-1806.02 if the corporation is a national business organization incorporated in the District of Columbia, that:

(1) Has a board of directors which includes members who are also chief executive officers of technology-related corporations involved in education and workforce development issues;

(2) Has extensive practical experience with initiatives that link business resources and expertise with education and training systems;

(3) Has experience in working with State and local educational agencies throughout the United States with respect to the integration of academic studies with workforce preparation programs; and

(4) Has a nationwide structure through which additional resources can be leveraged and innovative practices disseminated.

(Apr. 26, 1996, 110 Stat. 1321 [265], Pub. L. 104-134, § 2603.)

Section references. — This section is referred to in §§ 38-1806.01, 38-1806.03, 38-1806.04, 38-1806.05, and 38-1806.09.

Prior Codifications. — 1981 Ed., § 31-2853.63.

§ 38-1806.04. Duties of the private, nonprofit corporation.

(a) *District Education and Learning Technologies Advancement Council.* —

(1) *Establishment.* — The private, nonprofit corporation shall establish a council to be known as the “District Education and Learning Technologies Advancement Council” (in this subchapter referred to as the “Council”).

(2) *Membership.* —

(A) *In general.* — The private, nonprofit corporation shall appoint members to the Council. An individual shall be appointed as a member to the Council on the basis of the commitment of the individual, or the entity which the individual is representing, to providing time, energy, and resources to the Council.

(B) *Compensation.* — Members of the Council shall serve without compensation.

(3) *Duties.* — The Council:

(A) Shall advise the private, nonprofit corporation with respect to the duties of the corporation under subsections (b) through (d) of this section; and

(B) Shall assist the corporation in leveraging private sector resources for the purpose of carrying out such duties.

(b) *Access to state-of-the-art educational technology.* —

(1) *In general.* — The private, nonprofit corporation, in conjunction with the Superintendent, students, parents, and teachers, shall establish and implement strategies to ensure access to state-of-the-art educational technology within the District of Columbia public schools and public charter schools.

(2) *Electronic data transfer system.* — The private, nonprofit corporation shall assist the Superintendent in acquiring the necessary equipment, including computer hardware and software, to establish an electronic data transfer system. The private, nonprofit corporation shall also assist in arranging for training of District of Columbia public school employees in using such equipment.

(3) *Technology assessment.* —

(A) *In general.* — In establishing and implementing the strategies under paragraph (1) of this subsection, the private, nonprofit corporation, not later than September 1, 1996, shall provide for an assessment of the availability, on April 26, 1996, of state-of-the-art educational technology within the District of Columbia public schools and public charter schools.

(B) *Conduct of assessment.* — In providing for the assessment under subparagraph (A) of this paragraph, the private, nonprofit corporation:

(i) Shall provide for onsite inspections of the state-of-the-art educational technology within a minimum sampling of District of Columbia public schools and public charter schools; and

(ii) Shall ensure proper input from students, parents, teachers, and other school officials through the use of focus groups and other appropriate mechanisms.

(C) *Results of assessment.* — The private, nonprofit corporation shall ensure that the assessment carried out under this paragraph provides, at a minimum, necessary information on state-of-the-art educational technology within the District of Columbia public schools and public charter schools, including:

(i) The extent to which typical District of Columbia public schools have access to such state-of-the-art educational technology and training for such technology;

(ii) How such schools are using such technology;

(iii) The need for additional technology and the need for infrastructure for the implementation of such additional technology;

(iv) The need for computer hardware, software, training, and funding for such additional technology or infrastructure; and

(v) The potential for computer linkages among District of Columbia public schools and public charter schools.

(4) *Short-term technology plan.* —

(A) *In general.* — Based upon the results of the technology assessment under paragraph (3) of this subsection, the private, nonprofit corporation shall develop a 3-year plan that includes goals, priorities, and strategies for obtaining the resources necessary to implement strategies to ensure access to state-of-the-art educational technology within the District of Columbia public schools and public charter schools.

(B) *Implementation.* — The private, nonprofit corporation, in conjunction with schools, students, parents, and teachers, shall implement the plan developed under subparagraph (A) of this paragraph.

(5) *Long-term technology plan.* — Prior to the completion of the implementation of the short-term technology plan under paragraph (4) of this subsection, the private, nonprofit corporation shall develop a plan under which the corporation will continue to coordinate the donation of private sector resources for maintaining the continuous improvement and upgrading of state-of-the-art educational technology within the District of Columbia public schools and public charter schools.

(c) *District Employment and Learning Center.* —

(1) *Establishment.* — The private, nonprofit corporation shall establish a center to be known as the “District Employment and Learning Center” (in this subchapter referred to as the “Center”), which shall serve as a regional institute providing job training and employment assistance.

(2) *Duties.* —

(A) *Job training and employment assistance program.* — The Center shall establish a program to provide job training and employment assistance in the District of Columbia and shall coordinate with career preparation programs in existence on April 26, 1996, such as vocational education, school-to-work, and career academies in the District of Columbia public schools.

(B) *Conduct of program.* — In carrying out the program established under subparagraph (A) of this paragraph, the Center:

(i) Shall provide job training and employment assistance to youths who have attained the age of 18 but have not attained the age of 26, who are residents of the District of Columbia, and who are in need of such job training and employment assistance for an appropriate period not to exceed 2 years;

(ii) Shall work to establish partnerships and enter into agreements with appropriate agencies of the District of Columbia Government to serve individuals participating in appropriate federal programs, including programs under the Job Training Partnership Act or title I of the Workforce Investment Act of 1998, the Job Opportunities and Basic Skills Training Program under part F of title IV of the Social Security Act (42 U.S.C. 681 et seq.), the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et

seq.), and the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 et seq.);

(iii) Shall conduct such job training, as appropriate, through a consortium of colleges, universities, community colleges, businesses, and other appropriate providers, in the District of Columbia metropolitan area;

(iv) Shall design modular training programs that allow students to enter and leave the training curricula depending on their opportunities for job assignments with employers; and

(v) Shall utilize resources from businesses to enhance work-based learning opportunities and facilitate access by students to work-based learning and work experience through temporary work assignments with employers in the District of Columbia metropolitan area.

(C) *Compensation.* — The Center may provide compensation to youths participating in the program under this paragraph for part-time work assigned in conjunction with training. Such compensation may include need-based payments and reimbursement of expenses.

(d) *Workforce preparation initiatives.* —

(1) *In general.* — The private, nonprofit corporation shall establish initiatives with the District of Columbia public schools, and public charter schools, appropriate governmental agencies, and businesses and other private entities, to facilitate the integration of rigorous academic studies with workforce preparation programs in District of Columbia public schools and public charter schools.

(2) *Conduct of initiatives.* — In carrying out the initiatives under paragraph (1) of this subsection, the private, nonprofit corporation shall, at a minimum, actively develop, expand, and promote the following programs:

(A) Career academy programs in secondary schools, as such programs are established in certain District of Columbia public schools, which provide a school-within-a-school concept, focusing on career preparation and the integration of the academy programs with vocational and technical curriculum; and

(B) Programs carried out in the District of Columbia that are funded under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 et seq.).

(Apr. 26, 1996, 110 Stat. 1321 265, Pub. L. 104-134, § 2604; October 21, 1998, 112 Stat. 2681 482, Pub. L. 105-277, § 405(d)(19).)

Section references. — This section is referred to in §§ 38-1806.01, 38-1806.02, 38-1806.05, 38-1806.06, 38-1806.08, and 38-1806.09.

Prior Codifications. — 1981 Ed., § 31-2853.64.

Effect of amendments. — Pub. L. 105-277,

in subsec. (c)(2)(B)(ii), inserted “or title I of the Workforce Investment Act of 1998.”.

References in text. — Part F of title IV of the Social Security Act (42 U.S.C. § 681 et seq.), referred to in (c)(2)(B)(ii), was repealed by Act Aug. 22, 1996, P.L. 104-193, § 108 (110 Stat. 2167).

§ 38-1806.05. Matching funds.

The private, nonprofit corporation, to the extent practicable, shall provide matching funds, or in-kind contributions, or a combination thereof, for the

purpose of carrying out the duties of the corporation under § 38-1806.04, as follows:

(1) For fiscal year 1997, the nonprofit corporation shall provide matching funds or in-kind contributions of \$1 for every \$1 of federal funds provided under this subchapter for such year for activities under § 38-1806.04.

(2) For fiscal year 1998, the nonprofit corporation shall provide matching funds or in-kind contributions of \$3 for every \$1 of federal funds provided under this subchapter for such year for activities under § 38-1806.04.

(3) For fiscal year 1999, the nonprofit corporation shall provide matching funds or in-kind contributions of \$5 for every \$1 of federal funds provided under this subchapter for such year for activities under § 38-1806.04.

(Apr. 26, 1996, 110 Stat. 1321 [268], Pub. L. 104-134, § 2605.)

Section references. — This section is referred to in §§ 38-1806.01, 38-1806.04, and 38-1806.09. **Prior Codifications.** — 1981 Ed., § 31-2853.65.

§ 38-1806.06. Report.

The private, nonprofit corporation shall prepare and submit to the appropriate congressional committees on a quarterly basis, or, with respect to fiscal year 1997, on a semiannual basis, a report which shall contain:

(1) The activities the corporation has carried out, including the duties of the corporation described in § 38-1806.04, for the 3-month period ending on the date of the submission of the report, or, with respect to fiscal year 1997, the 6-month period ending on the date of the submission of the report;

(2) An assessment of the use of funds or other resources donated to the corporation;

(3) The results of the assessment carried out under § 38-1806.04(b)(3); and

(4) A description of the goals and priorities of the corporation for the 3-month period beginning on the date of the submission of the report, or, with respect to fiscal year 1997, the 6-month period beginning on the date of the submission of the report.

(Apr. 26, 1996, 110 Stat. 1321 268, Pub. L. 104-134, § 2606.)

Section references. — This section is referred to in §§ 38-1806.01, 38-1806.04, 38-1806.05, and 38-1806.09. **Prior Codifications.** — 1981 Ed., § 31-2853.66.

§ 38-1806.07. Jobs for D.C. Graduates Program.

(a) *In general.* — The nonprofit corporation shall establish a program, to be known as the “Jobs for D.C. Graduates Program”, to assist District of Columbia public schools and public charter schools in organizing and implementing a school-to-work transition system, which system shall give priority to providing assistance to at-risk youths and disadvantaged youths.

(b) *Conduct of program.* — In carrying out the program established under

subsection (a), the nonprofit corporation, consistent with the policies of the nationally recognized Jobs for America's Graduates, Inc., shall:

- (1) Establish performance standards for such program;
- (2) Provide ongoing enhancement and improvements in such program;
- (3) Provide research and reports on the results of such program; and
- (4) Provide preservice and inservice training.

(Apr. 26, 1996, 110 Stat. 1321 269, Pub. L. 104-134, § 2607.)

Section references. — This section is referred to in §§ 38-1806.01, 38-1806.02, 38-1806.04, 38-1806.05, 38-1806.08, and 38-1806.09.

Prior Codifications. — 1981 Ed., § 31-2853.67.

§ 38-1806.08. Authorization of appropriations.

(a) *Authorization.* —

(1) *Delta Council; access to state-of-the-art educational technology; and workforce preparation initiatives.* — There are authorized to be appropriated to carry out subsections (a), (b), and (d) of § 38-1806.04, \$1,000,000 for each of the fiscal years 1997, 1998, and 1999.

(2) *Deal Center.* — There are authorized to be appropriated to carry out § 38-1806.04(c), \$2,000,000 for each of the fiscal years 1997, 1998, and 1999.

(3) *Jobs for D.C. Graduates Program.* — There are authorized to be appropriated to carry out § 38-1806.07:

(A) \$2,000,000 for fiscal year 1997; and

(B) \$3,000,000 for each of the fiscal years 1998 through 2001.

(b) *Availability.* — Amounts authorized to be appropriated under subsection (a) are authorized to remain available until expended.

(Apr. 26, 1996, 110 Stat. 1321 [269], Pub. L. 104-134, § 2608.)

Section references. — This section is referred to in §§ 38-1806.01, 38-1806.04, 38-1806.05, and 38-1806.09.

Prior Codifications. — 1981 Ed., § 31-2853.68.

§ 38-1806.09. Termination of federal support; sense of the Congress relating to continuation of activities.

(a) *Termination of federal support.* — The authority under this subchapter to provide assistance to the private, nonprofit corporation or any other entity established pursuant to this subchapter shall terminate on October 1, 1999.

(b) *Sense of the Congress relating to continuation of activities.* — It is the sense of the Congress that:

(1) The activities of the private, nonprofit corporation under § 38-1806.04 should continue to be carried out after October 1, 1999, with resources made available from the private sector; and

(2) The corporation should provide oversight and coordination for such activities after such date.

(Apr. 26, 1996, 110 Stat. 1321 269, Pub. L. 104-134, § 2609.)

Section references. — This section is referred to in §§ 38-1806.01, 38-1806.04, and 38-1806.05.

Prior Codifications. — 1981 Ed., § 31-2853.69.

*Subchapter VII. Management and Fiscal Accountability;
Preservation of School-Based Resources.*

§ 38-1807.51. Management support systems.

(a) *Food services and security services.* — Notwithstanding any other law, rule, or regulation, the Board of Education shall enter into a contract for academic year 1995-1996 and each succeeding academic year, for the provision of all food services operations and security services for the District of Columbia public schools, unless the Superintendent determines that it is not feasible and provides the Superintendent's reasons in writing to the Board of Education and the Authority.

(b) *Development of new management and data systems.* — Notwithstanding any other law, rule, or regulation, the Board of Education shall, in academic year 1995-1996, consult with the Authority on the development of new management and data systems, as well as training of personnel to use and manage the systems in areas of budget, finance, personnel and human resources, management information services, procurement, supply management, and other systems recommended by the Authority. Such plans shall be consistent with, and contemporaneous to, the District of Columbia Government's development and implementation of a replacement for the financial management system for the District of Columbia Government in use on April 26, 1996.

(Apr. 26, 1996, 110 Stat. 1321 [270], Pub. L. 104-134, § 2751.)

Prior Codifications. — 1981 Ed., § 31-2853.71.

§ 38-1807.52. Access to fiscal and staffing data.

(a) *In general.* — The budget, financial-accounting, personnel, payroll, procurement, and management information systems of the District of Columbia public schools shall be coordinated and interface with related systems of the District of Columbia Government.

(b) *Access.* — The Board of Education shall provide read-only access to its internal financial management systems and all other data bases to designated staff of the Mayor, the Council, the Authority, and appropriate congressional committees.

(Apr. 26, 1996, 110 Stat. 1321 [270], Pub. L. 104-134, § 2752.)

Prior Codifications. — 1981 Ed., § 31-2853.72.

§ 38-1807.53. Development of fiscal year 1997 budget request.

(a) *In general.* — The Board of Education shall develop its fiscal year 1997 gross operating budget and its fiscal year 1997 appropriated funds budget request in accordance with this section.

(b) *Fiscal Year 1996 Budget Revision.* — Not later than 60 days after April 26, 1996, the Board of Education shall develop, approve, and submit to the Mayor, the District of Columbia Council, the Authority, and appropriate Congressional committees, a revised fiscal year 1996 gross operating budget that reflects the amount appropriated in the District of Columbia Appropriations Act, 1996, and which:

(1) Is broken out on the basis of appropriated funds and nonappropriated funds, control center, responsibility center, agency reporting code, object class, and object; and

(2) Indicates by position title, grade, and agency reporting code, all staff allocated to each District of Columbia public school as of October 15, 1995, and indicates on an object class basis all other-than-personal-services financial resources allocated to each school.

(c) *Zero-Base budget.* — For fiscal year 1997, the Board of Education shall build its gross operating budget and appropriated funds request from a zero-base, starting from the local school level through the central office level.

(d) *School-by-school budgets.* — The Board of Education's initial fiscal year 1997 gross operating budget and appropriated funds budget request submitted to the Mayor, the District of Columbia Council, and the Authority shall contain school-by-school budgets and shall also:

(1) Be broken out on the basis of appropriated funds and nonappropriated funds, control center, responsibility center, agency reporting code, object class, and object;

(2) Indicate by position title, grade, and agency reporting code all staff budgeted for each District of Columbia public school, and indicate on an object class basis all other-than-personal-services financial resources allocated to each school; and

(3) Indicate the amount and reason for all changes made to the initial fiscal year 1997 gross operating budget and appropriated funds request from the revised fiscal year 1996 gross operating budget required by subsection (b) of this section.

(Apr. 26, 1996, 110 Stat. 1321 [270], Pub. L. 104-134, § 2753.)

Prior Codifications. — 1981 Ed., § 31-2853.73.

§§ 38-1807.54, 38-1807.55. [Reserved].

§ 38-1807.56. Preservation of school-based staff positions [Repealed].

Repealed.

(Apr. 26, 1996, 110 Stat. 1321 271, Pub. L. 104-134, § 2756; Oct. 20, 2005, D.C. Law 16-33, § 4022(a), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 31-2853.76.

Emergency legislation. — For temporary (90 day) repeal of section, see § 4022(a) of Fiscal Year 2006 Budget Support Emergency

Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

§ 38-1807.57. Preservation of school-based staff positions.

(a) *Findings.* — The Council of the District of Columbia finds that:

(1) In Fiscal Year 2006, the District of Columbia Public Schools (“DCPS”) will receive a core budget of \$779,309,000 with additional funding in the amount of \$21 million for the Superintendent’s school reform initiatives.

(2) Despite an overall increase in funding for DCPS, local schools have been forced to develop plans to reduce their workforces because the 3.07% increase in the uniform per student funding formula does not cover the average step increase of 4.77% included in collective bargaining agreements approved by the Mayor and Council.

(3) The Council believes that these reductions, which would come one year following the elimination of 500 school-based positions, are unacceptable and, if implemented, would be injurious to the DCPS.

(4) As a result, there is a need to avert layoffs of more than 300 staff at individual schools.

(5) DCPS should absorb the cost of the step increases from non-local school budget funds.

(b) *Restrictions on reductions of school-based employees.* — To the extent that a reduction in the number of full-time equivalent positions for the District of Columbia public schools is required to remain within the budget established for the public schools in appropriations acts, no reductions shall be made from the full-time equivalent positions for school-based teachers, principals, counselors, librarians, or other school-based educational positions that were established as of the end of Fiscal Year 2005, unless the Board of Education makes a determination based on student enrollment that:

(1) Fewer school-based positions are needed to maintain established pupil-to-staff ratios; or

(2) Reductions in positions for other than school-based employees are not practicable.

(c) *Definition.* — The term “school-based educational position” means a position located at a District of Columbia public school or other position providing direct support to students at such a school, including a position for a clerical, stenographic, or secretarial employee, but not including any part-time educational aide position.

(Apr. 26, 1996, 110 Stat. 1321 271, Pub. L. 104-134, § 2757, as added Oct. 20, 2005, D.C. Law 16-33, § 4022(b), 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 4022(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Short title. — Short title of subtitle C of title IV of Law 16-33: Section 4021 of D.C. Law

16-33 provided that subtitle C of title IV of the act may be cited as the Preservation of School-Based Staff Positions Amendment Act of 2005.

Subchapter VIII. Establishment and Organization of the Commission on Consensus Reform in the District of Columbia Public Schools.

§ 38-1808.51. Commission on Consensus Reform in the District of Columbia Public Schools.

Expired.

(Apr. 26, 1996, 110 Stat. 1321 [272], Pub. L. 104-134, § 2852.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1808.53, 38-1808.54, and 38-1808.58.

Prior Codifications. — 1981 Ed., § 31-2853.81.

§ 38-1808.52. Primary purpose and findings. [Expired].

Expired.

(Apr. 26, 1996, 110 Stat. 1321 [273], Pub. L. 104-134, § 2852.)

Section references. — This section is referred to in §§ 38-1800.02, 31-1808.53, and 31-1808.58.

Prior Codifications. — 1981 Ed., § 31-2853.82.

§ 38-1808.53. Duties and powers of the Consensus Commission. [Expired].

Expired. :x60.

(Apr. 26, 1996, 110 Stat. 1321 [274], Pub. L. 104-134, § 2853.)

Section references. — This section is referred to in §§ 38-1800.02 and 38-1808.58.

Prior Codifications. — 1981 Ed., § 31-2853.83.

§ 38-1808.54. Improving order and discipline. [Expired].

Expired.

(Apr. 26, 1996, 110 Stat. 1321 [275], Pub. L. 104-134, § 2854.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1808.53, and 38-1808.58.

Prior Codifications. — 1981 Ed., § 31-2853.84.

§ 38-1808.55. Educational performance audits. [Expired].

Expired.

(Apr. 26, 1996, 110 Stat. 1321 [275], Pub. L. 104-134, § 2855.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1808.53, and 38-1808.58.

Prior Codifications. — 1981 Ed., § 31-2853.85.

§ 38-1808.56. Investigative powers. [Expired].

Expired.

(Apr. 26, 1996, 110 Stat. 1321 [276], Pub. L. 104-134, § 2856.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1808.53, and 38-1808.58.

Prior Codifications. — 1981 Ed., § 31-2853.86.

§ 38-1808.57. Recommendations of the Consensus Commission. [Expired].

Expired.

(Apr. 26, 1996, 110 Stat. 1321 [276], Pub. L. 104-134, § 2857.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1808.53, and 38-1808.58.

Prior Codifications. — 1981 Ed., § 31-2853.87.

§ 38-1808.58. Expiration date. [Expired].

Expired.

(Apr. 26, 1996, 110 Stat. 1321 [276], Pub. L. 104-134, § 2858.)

Section references. — This section is referred to in §§ 38-1800.02, 38-1808.53, and 38-1808.58.

Editor's notes. — Expiration of subchapter VIII: Pub. L. 104-134, § 258, codified as § 38-1808.58, provided that this subchapter shall be effective during the period beginning on April 26, 1996 and ending 7 years after such date.

Prior Codifications. — 1981 Ed., § 31-2853.88.

Subchapter IX. Parent Attendance at Parent-Teacher Conferences.

§ 38-1809.01. Policy.

Notwithstanding any other provision of law, the Mayor is authorized to develop and implement a policy encouraging all residents of the District of Columbia with children attending a District of Columbia public school to attend and participate in at least one parent-teacher conference every 90 days during the academic year.

(Apr. 26, 1996, 110 Stat. 1321 [276], Pub. L. 104-134, § 2901.)

Cross references. — Criminal Justice Advisory Board, see § 3-901 et seq.

Smoke detectors, see § 6-751.01 et seq.

Prior Codifications. — 1981 Ed., § 31-2853.91.

Emergency legislation. — For temporary (90 day) addition of § 38-1851, see § 3322 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

CHAPTER 18A. MISCELLANEOUS PUBLIC CHARTER SCHOOL PROVISIONS.

Subchapter I. Public School and Public Charter School Facilities Sharing

Subchapter III. Evaluation of Authorizing Boards

Sec.

38-1831.01. Utilization of space in District of Columbia public schools by public charter schools.

Sec.

38-1835.01. Evaluation of charter school authorizing boards.

Subchapter II. Public Charter School Financing and Support

Subchapter IV. Public Charter School Facilities Allotment Task Force

38-1833.01. Office of Public Charter School Financing and Support.

38-1837.01. Establishment.

38-1833.02. Direct Loan Fund for Charter School Improvement.

38-1837.02. Oversight and composition of the Task Force.

Subchapter I. Public School and Public Charter School Facilities Sharing.

§ 38-1831.01. Utilization of space in District of Columbia public schools by public charter schools.

(a) The District of Columbia Public School (“DCPS”) system shall allow existing public charter schools that are chartered by the District of Columbia Board of Education or the Public Charter School Board prior to September 30, 2002, to utilize space in DCPS facilities, where such facilities are currently or projected to be underutilized because of decreased or stagnant student enrollment.

(b)(1) As payment for the space allocation, the public charter school shall pay, from its facility allowance, a portion of all funding amounts dealing with capital and maintenance costs or an amount agreeable to the charter school and DCPS.

(2) This amount of payment shall be agreed upon by DCPS and the Charter School before relocation of any public charter school into a public school facility. The fee charged shall be added to the individual school’s budget.

(3) The Superintendent of Schools, in cooperation with the Board of Education, shall provide a plan for the co-location of public schools chartered after October 1, 2002, to the Council, by March 1, 2003.

(c) The Board of Education shall promulgate rules to implement the provision of this chapter.

(Oct. 1, 2002, D.C. Law 14-190, § 3422, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

*Subchapter II. Public Charter School Financing and Support.***§ 38-1833.01. Office of Public Charter School Financing and Support.**

(a) There is established within the District of Columbia, under the authority of the Mayor, an Office of Public Charter School Financing and Support.

(b) The Office shall have the following three functions:

(1) To administer the credit enhancement fund for public charter schools under section 603(e) of the Student Loan Marketing Association Reorganization Act of 1996 (20 U.S.C. 1155(e)), subject to the provisions of such section.

(2) To administer the Direct Loan Fund for Charter School Improvement under § 38-1833.02, subject to the provisions of such section.

(3) To develop, implement and provide oversight for other public charter school financing programs and support services as requested by the Mayor and the Council of the District of Columbia.

(c) The functions described in subsection (b) of this section may be provided by the Office directly or under contract with a qualified provider.

(Feb. 20, 2003, 117 Stat. 130, Pub. L. 108-7, § 143(a); Oct. 18, 2004, 118 Stat. 1348, Pub. L. 108-335, 340(b).)

Effect of amendments. — Pub. L. 108-335, Department of Banking and Financial Institutions”
in subsec. (a), substituted “under the authority of the Mayor” for “under the authority of the

§ 38-1833.02. Direct Loan Fund for Charter School Improvement.

(a) There is established within the District of Columbia a Direct Loan Fund for Charter School Improvement.

(b) The Direct Loan Fund for Charter School Improvement shall be administered by the Office of Charter School Financing and Support, except that no loan may be made under this section without the approval of the committee described in section 603(e)(3)(C)(iii) of the Student Loan Marketing Association Reorganization Act of 1996 (20 U.S.C. 1155(e)(3)(C)(iii)).

(c) Funds distributed under this section shall be for construction, purchase, renovation, and maintenance of charter school facilities.

(d) Loans distributed under this section shall not exceed \$2,000,000 per charter school campus.

(e) The Office of Charter School Financing and Support shall determine what interest rates and terms apply to loans granted under this section. In determining the rates and terms of a loan granted to a charter school, the Office of Charter School Financing and Support should do its best to provide low interest options and flexible terms.

(f) To be eligible for a loan under this subsection, an applicant shall be one of the following:

(A) A public charter school with a charter in effect pursuant to Chapter 18

of this title [§ 38-1800.01 et seq.], which meets or exceeds its performance goals as outlined in its originating charter;

(B) A limited liability company that participates in a New Markets Tax Credit program transaction structure with public charter schools; or

(C) A nonprofit corporation that develops and finances a facility that will be occupied by a public charter school throughout the term of the loan; provided, that in the event the facility financed under this subsection is not occupied by a public charter school, the loan shall be deemed to be in default.

(g) In repaying a loan granted under this section, a debtor may use facility maintenance funds granted to them by the District of Columbia Public Schools.

(h) The term of a loan within the context of a New Markets Tax Credit as this term is defined in the Internal Revenue Code, may extend to 7 years; all other loan terms under this subsection shall not exceed 5 years.

(Feb. 20, 2003, 117 Stat. 131, Pub. L. 108-7, 143(b); Sept. 24, 2010, D.C. Law 18-223, § 4012, 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 4042, 58 DCR 6226.)

Effect of amendments. — D.C. Law 18-223, in subsec. (d), substituted “school campus” for “school”.

D.C. Law 19-21 rewrote subsec. (f); and added subsec. (h). Prior to amendment, subsec. (f) read as follows: “(f) To be eligible for a loan under this section, an applicant shall be a public charter school with a charter in effect pursuant to Chapter 18 of this title which meets or exceeds its performance goals as outlined in its originating charter.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 4012 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 4042 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

Short title. — Short title: Section 4011 of D.C. Law 18-223 provided that subtitle B of title IV of the act may be cited as the “Direct Loan Fund for Charter School Improvement Amendment Act of 2010”.

Short title: Section 4041 of D.C. Law 19-21 provided that subtitle E of title IV of the act may be cited as “Direct Loan Fund for Charter School Improvement Amendment Act of 2011”.

References in text. — Section 603(e), referred to in subsec. (b), is codified at 20 U.S.C. § 1155(e) and pertains to school facility construction and repair in the District of Columbia.

Editor’s notes. — 20 U.S.C. § 1155(e), as of December 8, 2004, reads as follows:

“(e) Establishment of account

“(1) In general. Notwithstanding any other provision of law, the District of Columbia Financial Responsibility and Management Assistance Authority shall establish an account to receive—

“(A) amounts collected from the sale and proceeds resulting from the exercise of stock warrants pursuant to section 1087-3(c)(9) of this title;

“(B) amounts and proceeds remitted as compensation for the right to assign the ‘Sallie Mae’ name as a trademark or service mark pursuant to section 1087-3(e)(3) of this title; and

“(C) amounts and proceeds collected from the sale of the stock of the Corporation and deposited pursuant to subsection (c)(3) of this section.

“(2) Amounts and proceeds

“(A) Amounts and proceeds relating to Sallie Mae. The amounts and proceeds described in subparagraphs (A) and (B) of paragraph (1) shall be used to finance public elementary and secondary school facility construction and repair within the District of Columbia or to carry out the District of Columbia School Reform Act of 1995.

“(B) Amounts and proceeds relating to Connie Lee. The amounts and proceeds described in subparagraph (C) of paragraph (1) shall be used to finance public and public charter elementary and secondary school facility construction and repair within the District of Columbia. Of such amounts and proceeds, \$5,000,000 shall be set aside for a credit enhancement revolving fund for public charter schools in the District of Columbia, to be administered and disbursed in accordance with paragraph (3).

“(3) Credit enhancement revolving fund for public charter schools

“(A) Distribution of amounts. Of the amounts in the credit enhancement revolving fund established under paragraph (2)(B)—

“(i) 50 percent shall be used to make grants under subparagraph (B); and

“(ii) 50 percent shall be used to make grants under subparagraph (C).

“(B) Grants to eligible nonprofit corporations

“(i) In general. Using the amounts described in subparagraph (A)(i), the Mayor of the District of Columbia shall make and disburse grants to eligible nonprofit corporations to carry out the purposes described in subparagraph (E).

“(ii) Administration. Subject to subparagraph (F), the Mayor shall administer the program of grants under this subparagraph, except that if the committee described in subparagraph (C)(iii) is in operation and is fully functional prior to the date the Mayor makes the grants, the Mayor may delegate the administration of the program to the committee.

“(C) Other grants

“(i) In general. Using the amounts described in subparagraph (A)(ii), the Mayor of the District of Columbia shall make grants to entities to carry out the purposes described in subparagraph (E).

“(ii) Participation of schools. A public charter school in the District of Columbia may receive a grant under this subparagraph to carry out the purposes described in subparagraph (E) in the same manner as other entities receiving grants to carry out such activities.

“(iii) Administration through committee. Subject to subparagraph (F), the Mayor shall carry out this subparagraph through the committee appointed by the Mayor under the second sentence of paragraph (2)(B) (as in effect prior to November 22, 2000). The committee may enter into an agreement with a third party to carry out its responsibilities under this subparagraph.

“(iv) Cap on administrative costs. Not more than 5 percent of the funds available for grants under this subparagraph for a fiscal year may be used to cover the administrative costs of

making grants under this subparagraph for the fiscal year.

“(D) Special rule regarding eligibility of nonprofit corporations. In order to be eligible to receive a grant under this paragraph, a nonprofit corporation must provide appropriate certification to the Mayor or to the committee described in subparagraph (C)(iii) (as the case may be) that it is duly authorized by two or more public charter schools in the District of Columbia to act on their behalf in obtaining financing (or in assisting them in obtaining financing) to cover the costs of activities described in subparagraph (E)(i).

“(E) Purposes of grants

“(i) In general. The recipient of a grant under this paragraph shall use the funds provided under the grant to carry out activities to assist public charter schools in the District of Columbia in—

“(I) obtaining financing to acquire interests in real property (including by purchase, lease, or donation), including financing to cover planning, development, and other incidental costs;

“(II) obtaining financing for construction of facilities or the renovation, repair, or alteration of existing property or facilities (including the purchase or replacement of fixtures and equipment), including financing to cover planning, development, and other incidental costs;

“(III) enhancing the availability of loans (including mortgages) and bonds; and

“(IV) obtaining lease guarantees (in accordance with regulations promulgated by the Office of Public Charter School Financing).

“(ii) No direct funding for schools. Funds provided under a grant under this subparagraph may not be used by a recipient to make direct loans or grants to public charter schools.

“(F) Role of Office of Public Charter School Financing and Support. During fiscal year 2003 and each succeeding fiscal year, the Office of Public Charter School Financing and Support shall be responsible for receiving applications, making payments, and otherwise administering this paragraph, except that no grant may be made under this paragraph without the approval of the committee described in subparagraph (C)(iii).”

Subchapter III. Evaluation of Authorizing Boards.

§ 38-1835.01. Evaluation of charter school authorizing boards.

(a) Management evaluation of the District of Columbia Chartering Authorities for the District of Columbia Public Charter Schools shall be conducted by the Comptroller General of the United States every five years.

(b) Evaluation shall include the following:

- (1) Establish standards to assess each authorizer's procedures and oversight quality.
- (2) Identify gaps in oversight and recommendations.
- (3) Review processes of charter school applications.
- (4) Extent of ongoing monitoring, technical assistance, and sanctions provided to schools.
- (5) Compliance with annual reporting requirements.
- (6) Actual budget expenditures for the preceding 5 fiscal years.
- (7) Comparison of budget expenditures with mandated responsibilities.
- (8) Alignment with best practices.
- (9) Quality and timeliness of meeting section 38-1802.11(d), as amended.

(c) *Initial interim report to Congress.* — The Government Accountability Office shall submit to the Committees on Appropriations of the House of Representatives and Senate, no later than May 1, 2005, a baseline report on the performance of each authorizer in meeting the requirements of the School Reform Act of 1995.

(d) Hereafter § 38-1802.14(f), shall apply to the District of Columbia Board of Education Charter Schools Office.

(Oct. 18, 2004, 118 Stat. 1352, Pub. L. 108-335, § 346; Dec. 23, 2011, 125 Stat. 786, Pub. L. 112-74, § 816.)

Cross references. — Public Charter School Board, § 38-1802.14.

Effect of amendments. — The 2011 amendment by Pub. L. 112-74 deleted "Biennial" in the section heading and at the beginning of (a); added "every five years" at the end of (a);

substituted "5" for "2" in (b)(6); and made related changes.

References in text. — The School Reform Act of 1995, referred to in subsec. (c), is title II of Pub. L. 104-134, April 26, 1996, 110 Stat. 1321 226, codified as Chapter 18 of Title 38.

Subchapter IV. Public Charter School Facilities Allotment Task Force.

§ 38-1837.01. Establishment.

(a) There is established a Public Charter School Facilities Allotment Task Force ("Task Force"). The Task Force shall:

- (1) Consult with:
 - (A) Public charter schools;
 - (B) The Council;
 - (C) Relevant District government agencies; and
 - (D) Banking, or other financial, professionals to determine the financial implications of any changes to the current uniform per student formula for the public charter schools facilities allotment.
- (2) Conduct a comprehensive analysis of facilities expenditures among public charter schools, including the allowable facilities expenditures recommended by the Mayor, and identify additional factors bearing on expenditures, if any, for consideration;
- (3) Develop recommendations for a cost-based allocation formula for the public charter schools facilities allotment; and
- (4) Identify cost-saving strategies and measures to ensure that public

charter schools facilities allotment funds are used exclusively on public charter school facilities.

(b) The Task Force shall submit to the Council its analysis and recommendations, including its recommendation for a cost-based allocation formula for the public charter schools facilities allotment, by November 30, 2009.

(c) The Task Force shall be disbanded by no later than December 31, 2009.

(Mar. 3, 2010, D.C. Law 18-111, § 4021, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 4021 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) addition, see § 4021 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 4021 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — Law

18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 4020 of D.C. Law 18-111 provided that subtitle C of title IV of the act may be cited as the “Public Charter School Facilities Allotment Task Force Establishment Act of 2009”.

§ 38-1837.02. Oversight and composition of the Task Force.

(a) The Public Charter School Board shall oversee the Task Force, which shall be comprised of the following members, or their designees:

- (1) The Mayor;
- (2) The Chairman of the Council;
- (3) The Deputy Mayor for Education;
- (4) The State Superintendent of Education;
- (5) The Chairperson of the Public Charter School Board;
- (6) The Executive Director of the Public Charter School Board; and
- (7) The Chief Financial Officer for the District of Columbia.

(b) The following shall serve as advisory members of the Task Force;

(1) The chief financial officers, or their designees, of at least 6 public charter schools, representing a range of enrollment, grade levels, and geographic location;

(2) Professionals in the field of public charter school financing;

(3) Representatives from public charter school advocacy groups; and

(4) Other individuals considered necessary or beneficial by the Public Charter School Board.

(Mar. 3, 2010, D.C. Law 18-111, § 4022, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 4022 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) addition, see § 4022

of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 4022 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009

(D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-1837.01.

SUBTITLE IV-A. PUBLIC EDUCATION — SCHOOL CHOICE.

CHAPTER 18M. GRANTS FOR TUITION TO ATTEND PRIMARY AND SECONDARY SCHOOLS IN THE DISTRICT [REPEALED].

Sec.

38-1851.01 to 38-1851.11. [Repealed].

§ 38-1851.01. Purpose. [Repealed].

Repealed.

(Jan. 23, 2004, 118 Stat. 127, Pub. L. 108-199, § 303; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

Short title. — Short title: Section 301 of Pub. L. 108-199 provided that: “This title may be cited as the ‘D.C. School Choice Incentive Act of 2003.’”

§ 38-1851.02. Definitions. [Repealed].

Repealed.

(Jan. 23, 2004, 118 Stat. 134, Pub. L. 108-199, § 312; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

§ 38-1851.03. General authority. [Repealed].

Repealed.

(Jan. 23, 2004, 118 Stat. 127, Pub. L. 108-199, § 304; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

§ 38-1851.04. Applications. [Repealed].

Repealed.

(Jan. 23, 2004, 118 Stat. 128, Pub. L. 108-199, § 305; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

§ 38-1851.05. Priorities. [Repealed].

Repealed.

(Jan. 23, 2004, 118 Stat. 129, Pub. L. 108-199, § 306; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

§ 38-1851.06. Use of funds. [Repealed].

Repealed.

(Jan. 23, 2004, 118 Stat. 129, Pub. L. 108-199, § 307; Dec. 20, 2006, 120 Stat. 3053, Pub. L. 109-432, Div. C, Title III, § 404(a); Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

§ 38-1851.07. **Nondiscrimination. [Repealed].**

Repealed.

(Jan. 23, 2004, 118 Stat. 130, Pub. L. 108-199, § 308; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

§ 38-1851.08. **Evaluations. [Repealed].**

Repealed.

(Jan. 23, 2004, 118 Stat. 131, Pub. L. 108-199, § 309; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

§ 38-1851.09. **Reporting requirements. [Repealed].**

Repealed.

(Jan. 23, 2004, 118 Stat. 133, Pub. L. 108-199, § 310; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

§ 38-1851.10. **Other requirements for participating schools. [Repealed].**

Repealed.

(Jan. 23, 2004, 118 Stat. 133, Pub. L. 108-199, § 311; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

§ 38-1851.11. **Authorization of appropriations. [Repealed].**

Repealed.

(Jan. 23, 2004, 118 Stat. 134, Pub. L. 108-199, § 313; Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, § 3012(a).)

CHAPTER 18N. SCHOLARSHIPS FOR OPPORTUNITY AND RESULTS.

Sec.	Sec.
38-1853.01. Short title.	38-1853.09. Evaluations.
38-1853.02. Findings.	38-1853.10. Reporting requirements.
38-1853.03. Purpose.	38-1853.11. D.C. public schools and D.C. public charter schools.
38-1853.04. General authority.	38-1853.12. Transition provisions.
38-1853.05. Applications.	38-1853.13. Definitions.
38-1853.06. Priorities.	38-1853.14. Authorization of appropriations.
38-1853.07. Use of funds.	
38-1853.08. Nondiscrimination and other requirements for participating schools.	

§ 38-1853.01. Short title.

This chapter may be cited as the “Scholarships for Opportunity and Results Act” or the “SOAR Act”.

(Apr. 15, 2011, 125 Stat. 199, Pub. L. 112-10, Div. C, § 3001.)

§ 38-1853.02. Findings.

Congress finds the following:

(1) Parents are best equipped to make decisions for their children, including the educational setting that will best serve the interests and educational needs of their child.

(2) For many parents in the District of Columbia, public school choice provided under the Elementary and Secondary Education Act of 1965, as well as under other public school choice programs, is inadequate. More educational options are needed to ensure all families in the District of Columbia have access to a quality education. In particular, funds are needed to provide low-income parents with enhanced public opportunities and private educational environments, regardless of whether such environments are secular or nonsecular.

(3) While the per student cost for students in the public schools of the District of Columbia is one of the highest in the United States, test scores for such students continue to be among the lowest in the Nation. The National Assessment of Educational Progress (NAEP), an annual report released by the National Center for Education Statistics, reported in its 2009 study that students in the District of Columbia were being outperformed by every State in the Nation. On the 2009 NAEP, 56 percent of fourth grade students scored “below basic” in reading, and 44 percent scored “below basic” in mathematics. Among eighth grade students, 49 percent scored “below basic” in reading and 60 percent scored “below basic” in mathematics. On the 2009 NAEP reading assessment, only 17 percent of the District of Columbia fourth grade students could read proficiently, while only 13 percent of the eighth grade students scored at the proficient or advanced level.

(4) In 2003, Congress passed the DC School Choice Incentive Act of 2003 (Public Law 108-199; 118 Stat. 126), to provide opportunity scholarships to parents of students in the District of Columbia to enable them to pursue a

high-quality education at a public or private elementary or secondary school of their choice. The DC Opportunity Scholarship Program (DC OSP) under such Act was part of a comprehensive 3-part funding arrangement that also included additional funds for the District of Columbia public schools, and additional funds for public charter schools of the District of Columbia. The intent of the approach was to ensure that progress would continue to be made to improve public schools and public charter schools, and that funding for the opportunity scholarship program would not lead to a reduction in funding for the District of Columbia public and charter schools. Resources would be available for a variety of educational options that would give families in the District of Columbia a range of choices with regard to the education of their children.

(5) The DC OSP was established in accordance with the Supreme Court decision, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), which found that a program enacted for the valid secular purpose of providing educational assistance to low-income children in a demonstrably failing public school system is constitutional if it is neutral with respect to religion and provides assistance to a broad class of citizens who direct government aid to religious and secular schools solely as a result of their genuine and independent private choices.

(6) Since the inception of the DC OSP, it has consistently been oversubscribed. Parents express strong support for the opportunity scholarship program. Rigorous studies of the program by the Institute of Education Sciences have shown significant improvements in parental satisfaction and in reading scores that are more dramatic when only those students consistently using the scholarships are considered. The program also was found to result in significantly higher graduation rates for DC OSP students.

(7) The DC OSP is a program that offers families in need, in the District of Columbia, important alternatives while public schools are improved. This program should be reauthorized as 1 of a 3-part comprehensive funding strategy for the District of Columbia school system that provides new and equal funding for public schools, public charter schools, and opportunity scholarships for students to attend private schools.

(Apr. 15, 2011, 125 Stat. 199, Pub. L. 112-10, Div. C, § 3002.)

References in text. — The Elementary and Secondary Education Act of 1965, referred to in par. (2), is 20 U.S.C. §§ 6301 et seq.

§ 38-1853.03. Purpose.

The purpose of this chapter is to provide low-income parents residing in the District of Columbia, particularly parents of students who attend elementary schools or secondary schools identified for improvement, corrective action, or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316), with expanded opportunities for enrolling their children in other schools in the District of Columbia, at least until the public schools in the District of Columbia have adequately addressed shortfalls in

health, safety, and security, and the students in the District of Columbia public schools are testing in mathematics and reading at or above the national average.

(Apr. 15, 2011, 125 Stat. 200, Pub. L. 112-10, Div. C, § 3003.)

§ 38-1853.04. General authority.

(a) *Opportunity Scholarships.* —

(1) *In general.* — From funds appropriated under § 38-1853.14(a)(1), the Secretary shall award grants on a competitive basis to eligible entities with approved applications under § 38-1853.05 to carry out a program to provide eligible students with expanded school choice opportunities. The Secretary may award a single grant or multiple grants, depending on the quality of applications submitted and the priorities of this chapter.

(2) *Duration of grants.* — The Secretary may make grants under this subsection for a period of not more than 5 years.

(b) *D.C. Public Schools and Charter Schools.* — From funds appropriated under paragraphs (2) and (3) of § 38-1853.14(a), the Secretary shall provide funds to the Mayor of the District of Columbia, if the Mayor agrees to the requirements described in § 38-1853.11(a), for—

(1) the District of Columbia public schools to improve public education in the District of Columbia; and

(2) the District of Columbia public charter schools to improve and expand quality public charter schools in the District of Columbia.

(Apr. 15, 2011, 125 Stat. 200, Pub. L. 112-10, Div. C, § 3004.)

§ 38-1853.05. Applications.

(a) *In general.* — In order to receive a grant under § 38-1853.04(a), an eligible entity shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(b) *Contents.* — The Secretary may not approve the request of an eligible entity for a grant under § 38-1853.04(a) unless the entity's application includes—

(1) a detailed description of—

(A) how the entity will address the priorities described in § 38-1853.06;

(B) how the entity will ensure that if more eligible students seek admission in the program of the entity than the program can accommodate, eligible students are selected for admission through a random selection process which gives weight to the priorities described in § 38-1853.06;

(C) how the entity will ensure that if more participating eligible students seek admission to a participating school than the school can accommodate, participating eligible students are selected for admission through a random selection process;

(D) how the entity will notify parents of eligible students of the expanded choice opportunities in order to allow the parents to make informed decisions;

(E) the activities that the entity will carry out to provide parents of eligible students with expanded choice opportunities through the awarding of scholarships under § 38-1853.07(a);

(F) how the entity will determine the amount that will be provided to parents under § 38-1853.07(a)(2) for the payment of tuition, fees, and transportation expenses, if any;

(G) how the entity will seek out private elementary schools and secondary schools in the District of Columbia to participate in the program;

(H) how the entity will ensure that each participating school will meet the reporting and other program requirements under this chapter;

(I) how the entity will ensure that participating schools submit to site visits by the entity as determined to be necessary by the entity, except that a participating school may not be required to submit to more than 1 site visit per school year;

(J) how the entity will ensure that participating schools are financially responsible and will use the funds received under § 38-1853.07 effectively;

(K) how the entity will address the renewal of scholarships to participating eligible students, including continued eligibility; and

(L) how the entity will ensure that a majority of its voting board members or governing organization are residents of the District of Columbia; and

(2) an assurance that the entity will comply with all requests regarding any evaluation carried out under § 38-1853.09(a).

(Apr. 15, 2011, 125 Stat. 201, Pub. L. 112-10, Div. C, § 3005.)

§ 38-1853.06. Priorities.

In awarding grants under § 38-1853.04(a), the Secretary shall give priority to applications from eligible entities that will most effectively—

(1) in awarding scholarships under § 38-1853.07(a), give priority to—

(A) eligible students who, in the school year preceding the school year for which the eligible students are seeking a scholarship, attended an elementary school or secondary school identified for improvement, corrective action, or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316);

(B) students who have been awarded a scholarship in a preceding year under this chapter or the DC School Choice Incentive Act of 2003 (§ 38-1851.01 et seq., D.C. Official Code), as such Act was in effect on the day before the date of the enactment of this chapter, but who have not used the scholarship, including eligible students who were provided notification of selection for a scholarship for school year 2009-2010, which was later rescinded in accordance with direction from the Secretary of Education; and

(C) students whose household includes a sibling or other child who is already participating in the program of the eligible entity under this chapter, regardless of whether such students have, in the past, been assigned as members of a control study group for the purposes of an evaluation under § 38-1853.09(a);

(2) target resources to students and families that lack the financial resources to take advantage of available educational options; and

(3) provide students and families with the widest range of educational options.

(Apr. 15, 2011, 125 Stat. 202, Pub. L. 112-10, Div. C, § 3006.)

§ 38-1853.07. Use of funds.

(a) *Opportunity Scholarships.* —

(1) *In general.* — Subject to paragraphs (2) and (3), an eligible entity receiving a grant under § 38-1853.04(a) shall use the grant funds to provide eligible students with scholarships to pay the tuition, fees, and transportation expenses, if any, to enable the eligible students to attend the District of Columbia private elementary school or secondary school of their choice beginning in school year 2011-2012. Each such eligible entity shall ensure that the amount of any tuition or fees charged by a school participating in such entity's program under this chapter to an eligible student participating in the program does not exceed the amount of tuition or fees that the school charges to students who do not participate in the program.

(2) *Payments to parents.* — An eligible entity receiving a grant under § 38-1853.04(a) shall make scholarship payments under the entity's program under this chapter to the parent of the eligible student participating in the program, in a manner which ensures that such payments will be used for the payment of tuition, fees, and transportation expenses (if any), in accordance with this chapter.

(3) *Amount of assistance.* —

(A) *Varying amounts permitted.* — Subject to the other requirements of this section, an eligible entity receiving a grant under § 38-1853.04(a) may award scholarships in larger amounts to those eligible students with the greatest need.

(B) *Annual limit on amount.* —

(i) *Limit for school year 2011-2012.* — The amount of assistance provided to any eligible student by an eligible entity under the entity's program under this chapter for school year 2011-2012 may not exceed—

(I) \$ 8,000 for attendance in kindergarten through grade 8; and

(II) \$ 12,000 for attendance in grades 9 through 12.

(ii) *Cumulative inflation adjustment.* — Beginning with school year 2012-2013, the Secretary shall adjust the maximum amounts of assistance described in clause (i) for inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(4) *Participating school requirements.* — None of the funds provided under this chapter for opportunity scholarships may be used by an eligible student to enroll in a participating private school unless the participating school—

(A) has and maintains a valid certificate of occupancy issued by the District of Columbia;

(B) makes readily available to all prospective students information on its school accreditation;

(C) in the case of a school that has been operating for 5 years or less, submits to the eligible entity administering the program proof of adequate financial resources reflecting the financial sustainability of the school and the school's ability to be in operation through the school year;

(D) agrees to submit to site visits as determined to be necessary by the eligible entity pursuant to § 38-1853.05(b)(1)(I);

(E) has financial systems, controls, policies, and procedures to ensure that funds are used according to this chapter; and

(F) ensures that, with respect to core academic subjects (as such term is defined in section 9101(11) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(11)), participating students are taught by a teacher who has a baccalaureate degree or equivalent degree, whether such degree was awarded in or outside of the United States ensures that each teacher of core subject matter in the school has a baccalaureate degree or equivalent degree, whether such degree was awarded in or outside of the United States.

(b) *Administrative expenses.* — An eligible entity receiving a grant under § 38-1853.04(a) may use not more than 3 percent of the amount provided under the grant each year for the administrative expenses of carrying out its program under this chapter during the year, including—

(1) determining the eligibility of students to participate;

(2) selecting eligible students to receive scholarships;

(3) determining the amount of scholarships and issuing the scholarships to eligible students;

(4) compiling and maintaining financial and programmatic records; and

(5) conducting site visits as described in § 38-1853.05(b)(1)(I).

(c) *Parental assistance.* — An eligible entity receiving a grant under § 38-1853.04(a) may use not more than 2 percent of the amount provided under the grant each year for the expenses of educating parents about the entity's program under this chapter, and assisting parents through the application process, under this chapter, including—

(1) providing information about the program and the participating schools to parents of eligible students;

(2) providing funds to assist parents of students in meeting expenses that might otherwise preclude the participation of eligible students in the program; and

(3) streamlining the application process for parents.

(d) *Student academic assistance.* — An eligible entity receiving a grant under § 38-1853.04(a) may use not more than 1 percent of the amount provided under the grant each year for expenses to provide tutoring services to participating eligible students that need additional academic assistance. If there are insufficient funds to provide tutoring services to all such students in a year, the eligible entity shall give priority in such year to students who previously attended an elementary school or secondary school that was identified for improvement, corrective action, or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 6316).

(Apr. 15, 2011, 125 Stat. 202, Pub. L. 112-10, Div. C, § 3007; Feb. 1, 2012, 126 Stat. 6, Pub. L. 112-92, § 2.)

Effect of amendments. — Pub. L. 112-92 rewrote subsec. (a)(4)(F) which had read as follows:

“(F) ensures that each teacher of core subject

matter in the school has a baccalaureate degree or equivalent degree, whether such degree was awarded in or outside of the United States.”

§ 38-1853.08. Nondiscrimination and other requirements for participating schools.

(a) *In general.* — An eligible entity or a school participating in any program under this chapter shall not discriminate against program participants or applicants on the basis of race, color, national origin, religion, or sex.

(b) *Applicability and single sex schools, classes, or activities.* —

(1) *In general.* — Notwithstanding any other provision of law, the prohibition of sex discrimination in subsection (a) shall not apply to a participating school that is operated by, supervised by, controlled by, or connected to a religious organization to the extent that the application of subsection (a) is inconsistent with the religious tenets or beliefs of the school.

(2) *Single sex schools, classes, or activities.* — Notwithstanding subsection (a) or any other provision of law, a parent may choose and a school may offer a single sex school, class, or activity.

(3) *Applicability.* — For purposes of this chapter, the provisions of section 909 of the Education Amendments of 1972 (20 U.S.C. 1688) shall apply to this chapter as if section 909 of the Education Amendments of 1972 (20 U.S.C. 1688) were part of this chapter.

(c) *Children with disabilities.* — Nothing in this chapter may be construed to alter or modify the provisions of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.).

(d) *Religiously affiliated schools.* —

(1) *In general.* — Notwithstanding any other provision of law, a school participating in any program under this chapter that is operated by, supervised by, controlled by, or connected to, a religious organization may exercise its right in matters of employment consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-1 et seq.), including the exemptions in such title.

(2) *Administration Of Tests.* — The Institute of Education Sciences shall administer nationally norm-referenced standardized tests, as described in paragraph (3)(A) of § 38-1853.09(a), to students participating in the evaluation under § 38-1853.09(a) for the purpose of conducting the evaluation under such section, except where a student is attending a participating school that is administering the same nationally norm-referenced standardized test in accordance with the testing requirements described in paragraph (1).

(3) *Test Results.* — Each participating school that administers the nationally norm-referenced standardized test described in paragraph (2) to an eligible student shall make the test results, with respect to such student, available to the Secretary as necessary for evaluation under § 38-1853.09(a).

(e) *Rule of construction.* — A scholarship (or any other form of support provided to parents of eligible students) under this chapter shall be considered assistance to the student and shall not be considered assistance to the school that enrolls the eligible student. The amount of any scholarship (or other form of support provided to parents of an eligible student) under this chapter shall not be treated as income of the child or his or her parents for purposes of Federal tax laws or for determining eligibility for any other Federal program.

(f) *Requests for data and information.* — Each school participating in a program funded under this chapter shall comply with all requests for data and information regarding evaluations conducted under § 38-1853.09(a).

(g) *Rules of conduct and other school policies.* — A participating school, including the schools described in subsection (d), may require eligible students to abide by any rules of conduct and other requirements applicable to all other students at the school.

(h) *Nationally norm-referenced standardized tests.* —

(1) *In general.* — Each participating school shall comply with any testing requirements determined to be necessary for evaluation under § 853.09(a)(2)(A)(i).

(2) *Administration Of Tests.* — The Institute of Education Sciences shall administer nationally norm-referenced standardized tests, as described in paragraph (3)(A) of § 853.09(a), to students participating in the evaluation under § 38-1853.09 for the purpose of conducting the evaluation under such section, except where a student is attending a participating school that is administering the same nationally norm-referenced standardized test in accordance with the testing requirements described in paragraph (1).

(3) *Test Results.* — Each participating school that administers the nationally norm-referenced standardized test described in paragraph (2) to an eligible student shall make the test results, with respect to such student, available to the Secretary as necessary for evaluation under § 38-1853.09(a).

(Apr. 15, 2011, 125 Stat. 204, Pub. L. 112-10, Div. C, § 3008; Feb. 1, 2012, 126 Stat. 6, Pub. L. 112-92, § 3.)

Effect of amendments. — Pub. L. 112-92 rewrote subsec. (h)(2); and added subsec. (h)(3). Prior to amendment, subsec. (h)(2) read as follows: “(2) MAKE-UP SESSION.—If a participating school does not administer a nationally norm-referenced standardized test or the Institute of Education Sciences does not receive data

on a student who is receiving an opportunity scholarship, then the Secretary (through the Institute of Education Sciences of the Department of Education) shall administer such test at least one time during a school year for each student receiving an opportunity scholarship.”

§ 38-1853.09. Evaluations.

(a) *In general.* —

(1) *Duties of the Secretary and the Mayor.* — The Secretary and the Mayor of the District of Columbia shall—

(A) jointly enter into an agreement with the Institute of Education Sciences of the Department of Education to evaluate annually the performance of students who received scholarships under the 5-year program under this chapter;

(B) jointly enter into an agreement to monitor and evaluate the use of funds authorized and appropriated for the District of Columbia public schools and the District of Columbia public charter schools under this chapter; and

(C) make the evaluations described in subparagraphs (A) and (B) public in accordance with subsection (c).

(2) *Duties of the Secretary.* — The Secretary, through a grant, contract, or cooperative agreement, shall—

(A) *ensure that the evaluation under paragraph (1)(A)—*

(i) is conducted using the strongest possible research design for determining the effectiveness of the opportunity scholarship program under this chapter; and

(ii) addresses the issues described in paragraph (4); and

(B) disseminate information on the impact of the program—

(i) in increasing the academic growth and achievement of participating eligible students; and

(ii) on students and schools in the District of Columbia.

(3) *Duties of the Institute of Education Sciences.* — The Institute of Education Sciences of the Department of Education shall—

(A) use a grade appropriate, nationally norm-referenced standardized test each school year to assess participating eligible students in a manner consistent with § 38-1853.08(h);

(B) measure the academic achievement of all participating eligible students; and

(C) work with the eligible entities to ensure that the parents of each student who applies for a scholarship under this chapter (regardless of whether the student receives the scholarship) and the parents of each student participating in the scholarship program under this chapter, agree that the student will participate, if requested by the Institute of Education Sciences, in the measurements given annually by the Institute of Educational Sciences for the period for which the student applied for or received the scholarship, respectively, except that nothing in this subparagraph shall affect a student's priority for an opportunity scholarship as provided under § 38-1853.06.

(4) *Issues to be evaluated.* — The issues to be evaluated under paragraph (1)(A) shall include the following:

(A) A comparison of the academic growth and achievement of participating eligible students in the measurements described in paragraph (3) to the academic growth and achievement of the eligible students in the same grades who sought to participate in the scholarship program under this chapter but were not selected.

(B) The success of the program in expanding choice options for parents of participating eligible students, improving parental and student satisfaction of such parents and students, respectively, and increasing parental involvement of such parents in the education of their children.

(C) The reasons parents of participating eligible students choose for their children to participate in the program, including important characteristics for selecting schools.

(D) A comparison of the retention rates, high school graduation rates, and college admission rates of participating eligible students with the reten-

tion rates, high school graduation rates, and college admission rates of students of similar backgrounds who do not participate in such program.

(E) A comparison of the safety of the schools attended by participating eligible students and the schools in the District of Columbia attended by students who do not participate in the program, based on the perceptions of the students and parents.

(F) Such other issues with respect to participating eligible students as the Secretary considers appropriate for inclusion in the evaluation, such as the impact of the program on public elementary schools and secondary schools in the District of Columbia.

(G) An analysis of the issues described in subparagraphs (A) through (F) by applying such subparagraphs by substituting “the subgroup of participating eligible students who have used each opportunity scholarship awarded to such students under this chapter to attend a participating school” for “participating eligible students” each place such term appears.

(5) *Prohibition.* — Personally identifiable information regarding the results of the measurements used for the evaluations may not be disclosed, except to the parents of the student to whom the information relates.

(b) *Reports.* — The Secretary shall submit to the Committees on Appropriations, Education and the Workforce, and Oversight and Government Reform of the House of Representatives and the Committees on Appropriations, Health, Education, Labor, and Pensions, and Homeland Security and Governmental Affairs of the Senate—

(1) annual interim reports, not later than April 1 of the year following the year of the date of enactment of this chapter [April 15, 2011], and each subsequent year through the year in which the final report is submitted under paragraph (2), on the progress and preliminary results of the evaluation of the opportunity scholarship program funded under this chapter; and

(2) a final report, not later than 1 year after the final year for which a grant is made under § 38-1853.04(a), on the results of the evaluation of the program.

(c) *Public availability.* — All reports and underlying data gathered pursuant to this section shall be made available to the public upon request, in a timely manner following submission of the applicable report under subsection (b), except that personally identifiable information shall not be disclosed or made available to the public.

(d) *Limit on amount expended.* — The amount expended by the Secretary to carry out this section for any fiscal year may not exceed 5 percent of the total amount appropriated under § 38-1853.14(a)(1) for the fiscal year.

(Apr. 15, 2011, 125 Stat. 206, Pub. L. 112-10, Div. C, § 3009; Feb. 1, 2012, 126 Stat. 6, Pub. L. 112-92, § 4.)

Effect of amendments. — Pub. L. 112-92, in subsec. (a)(3)(A), inserted “in a manner consistent with § 38-1853.08(h)”; and, in subsec.

(a)(3)(C), inserted “if requested by the Institute of Education Sciences.”

§ 38-1853.10. Reporting requirements.

(a) *Activities Reports.* — Each eligible entity receiving funds under § 38-1853.04(a) during a year shall submit a report to the Secretary not later than July 30 of the following year regarding the activities carried out with the funds during the preceding year.

(b) *Achievement reports.* —

(1) *In general.* — In addition to the reports required under subsection (a), each eligible entity receiving funds under § 38-1853.04(a) shall, not later than September 1 of the year during which the second school year of the entity's program is completed and each of the next 2 years thereafter, submit to the Secretary a report, including any pertinent data collected in the preceding 2 school years, concerning—

(A) the academic growth and achievement of students participating in the program;

(B) the high school graduation and college admission rates of students who participate in the program, where appropriate; and

(C) parental satisfaction with the program.

(2) *Prohibiting disclosure of personal information.* — No report under this subsection may contain any personally identifiable information.

(c) *Reports to parents.* —

(1) *In general.* — Each eligible entity receiving funds under § 38-1853.04(a) shall ensure that each school participating in the entity's program under this chapter during a school year reports at least once during the year to the parents of each of the school's students who are participating in the program on—

(A) the student's academic achievement, as measured by a comparison with the aggregate academic achievement of other participating students at the student's school in the same grade or level, as appropriate, and the aggregate academic achievement of the student's peers at the student's school in the same grade or level, as appropriate;

(B) the safety of the school, including the incidence of school violence, student suspensions, and student expulsions; and

(C) the accreditation status of the school.

(2) *Prohibiting disclosure of personal information.* — No report under this subsection may contain any personally identifiable information, except as to the student who is the subject of the report to that student's parent.

(d) *Report to Congress.* — Not later than 6 months after the first appropriation of funds under § 3014, and each succeeding year thereafter, the Secretary shall submit to the Committees on Appropriations, Education and the Workforce, and Oversight and Government Reform of the House of Representatives and the Committees on Appropriations, Health, Education, Labor, and Pensions, and Homeland Security and Governmental Affairs of the Senate, an annual report on the findings of the reports submitted under subsections (a) and (b).

(Apr. 15, 2011, 125 Stat. 208, Pub. L. 112-10, Div. C, § 3010.)

§ 38-1853.11. D.C. public schools and D.C. public charter schools.

(a) *Condition of receipt of funds.* — As a condition of receiving funds under this chapter on behalf of the District of Columbia public schools and the District of Columbia public charter schools, the Mayor shall agree to carry out the following:

(1) *Information requests.* — Ensure that all the District of Columbia public schools and the District of Columbia public charter schools comply with all reasonable requests for information for purposes of the evaluation under § 38-1853.09(a).

(2) *Agreement with the Secretary.* — Enter into the agreement described in § 38-1853.09(a)(1)(B) to monitor and evaluate the use of funds authorized and appropriated for the District of Columbia public schools and the District of Columbia public charter schools under this chapter.

(3) *Submission of report.* — Not later than 6 months after the first appropriation of funds under § 38-1853.14, and each succeeding year thereafter, submit to the Committee on Appropriations, the Committee on Education and the Workforce, and the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Appropriations, the Committee on Health, Education, Labor, and Pensions, and the Committee on Homeland Security and Governmental Affairs of the Senate, information on—

(A) how the funds authorized and appropriated under this chapter for the District of Columbia public schools and the District of Columbia public charter schools were used in the preceding school year; and

(B) how such funds are contributing to student achievement.

(b) *Enforcement.* — If, after reasonable notice and an opportunity for a hearing for the Mayor, the Secretary determines that the Mayor has not been in compliance with 1 or more of the requirements described in subsection (a), the Secretary may withhold from the Mayor, in whole or in part, further funds under this chapter for the District of Columbia public schools and the District of Columbia public charter schools.

(c) *Rule of construction.* — Nothing in this section shall be construed to reduce, or otherwise affect, funding provided under this chapter for the opportunity scholarship program under this chapter.

(Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, Div. C, § 3011.)

§ 38-1853.12. Transition provisions.

(a) *Repeal.* — The DC School Choice Incentive Act of 2003 (§ 38-1851.01 et seq., D.C. Official Code) is repealed.

(b) *Special Rules.* — Notwithstanding any other provision of law—

(1) funding appropriated to provide opportunity scholarships for students in the District of Columbia under the heading “Federal Payment for School Improvement” in title IV of division D of the Omnibus Appropriations Act, 2009 (Public Law 111-8; 123 Stat. 653), the heading “Federal Payment for School

Improvement” in title IV of division C of the Consolidated Appropriations Act, 2010 (Public Law 111-117; 123 Stat. 3181), or any other Act, may be used to provide opportunity scholarships under § 38-1853.07(a) for the 2011-2012 school year to students who have not previously received such scholarships;

(2) the fourth and fifth provisos under the heading “Federal Payment for School Improvement” of title IV of Division C of the Consolidated Appropriations Act, 2010 (Public Law 111-117; 123 Stat. 3181) shall not apply; and

(3) any unobligated amounts reserved to carry out the provisos described in paragraph (2) shall be made available to an eligible entity receiving a grant under § 38-1853.04(a)—

(A) for administrative expenses described in § 38-1853.07(b); or

(B) to provide opportunity scholarships under § 38-1853.07(a), including to provide such scholarships for the 2011-2012 school year to students who have not previously received such scholarships.

(c) *Multiyear awards.* — The recipient of a grant or contract under the DC School Choice Incentive Act of 2003 (§ 38-1851.01 et seq., D.C. Official Code), as such Act was in effect on the day before April 15, 2011, shall continue to receive funds in accordance with the terms and conditions of such grant or contract, except that—

(1) the provisos relating to opportunity scholarships in the Acts described in subsection (b)(1) shall not apply; and

(2) the memorandum of understanding described in subsection (d), including any revision made under such subsection, shall apply.

(d) *Memorandum of understanding.* — The Secretary and the Mayor of the District of Columbia shall revise the memorandum of understanding entered into under the DC School Choice Incentive Act of 2003 (§ 38-1851.01 et seq., D.C. Official Code), as such Act was in effect on the day before April 15, 2011, to address—

(1) the implementation of the opportunity scholarship program under this chapter; and

(1) how the Mayor will ensure that the District of Columbia public schools and the District of Columbia public charter schools comply with all the reasonable requests for information as necessary to fulfill the requirements for evaluations conducted under § 38-1853.09(a).

(e) *Orderly transition.* — Subject to subsections (c) and (d), the Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to the authority of this chapter from any authority under the provisions of the DC School Choice Incentive Act of 2003 (§ 38-1851.01 et seq., D.C. Official Code), as such Act was in effect on the day before April 15, 2011.

(Apr. 15, 2011, 125 Stat. 209, Pub. L. 112-10, Div. C, § 3012.)

§ 38-1853.13. Definitions.

As used in this division:

(1) *Elementary school.* — The term “elementary school” means an institutional day or residential school, including a public elementary charter

school, that provides elementary education, as determined under District of Columbia law.

(2) *Eligible entity*. — The term “eligible entity” means any of the following:

(A) A nonprofit organization.

(B) A consortium of non profit organizations.

(3) *Eligible student*. — The term “eligible student” means a student who is a resident of the District of Columbia and comes from a household—

(A) receiving assistance under the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. § 2011 et seq.); or

(B) whose income does not exceed—

(i) 185 percent of the poverty line; or

(ii) in the case of a student participating in the opportunity scholarship program in the preceding year under this division or the DC School Choice Incentive Act of 2003 (§ 38-1851.01 et seq., D.C. Official Code), as such Act was in effect on the day before the date of enactment of this division [April 15, 2011], 300 percent of the poverty line.

(4) *Mayor*. — The term “Mayor” means the Mayor of the District of Columbia.

(5) *Parent*. — The term “parent” has the meaning given that term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7801).

(6) *Participating eligible student*. — The term “participating eligible student” means an eligible student awarded an opportunity scholarship under this division, without regard to whether the student uses the scholarship to attend a participating school.

(7) *Participating school*. — The term “participating school” means a private elementary school or secondary school participating in the opportunity scholarship program of an eligible entity under this division.

(8) *Poverty line*. — The term “poverty line” has the meaning given that term in 20 U.S.C. § 7801.

(9) *Secondary school*. — The term “secondary school” means an institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under District of Columbia law, except that the term does not include any education beyond grade 12.

(10) *Secretary*. — The term “Secretary” means the Secretary of Education.

(Apr. 15, 2011, 125 Stat. 210, Pub. L. 112-10, Div. C, § 3013.)

§ 38-1853.14. Authorization of appropriations.

(a) *In general*. — There are authorized to be appropriated \$ 60,000,000 for fiscal year 2012 and for each of the 4 succeeding fiscal years, of which—

(1) one-third shall be made available to carry out the opportunity scholarship program under this division for each fiscal year;

(2) one-third shall be made available to carry out § 3004(b)(1) for each fiscal year; and

(3) one-third shall be made available to carry out § 3004(b)(2) for each fiscal year.

(b) *Apportionment.* — If the total amount of funds appropriated under subsection (a) for a fiscal year does not equal \$ 60,000,000, the funds shall be apportioned in the manner described in subsection (a) for such fiscal year.

(Apr. 15, 2011, 125 Stat. 211, Pub. L. 112-10, Div. C, § 3014.)

SUBTITLE V. EDUCATION PERSONNEL.

CHAPTER 19. TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL.

Subchapter I. General

Sec.

38-1901. Sexual discrimination; salary deductions; employment as clerk or librarian.

38-1902. Installment payments to certain teachers.

38-1903. Teachers in the Americanization schools; custodial staff.

38-1904. Teaching vacancies.

38-1905. Vocational education.

38-1906. Classification of research assistants.

38-1907. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker; salary deductions.

Sec.

38-1908. Heads of certain departments; compensation.

38-1909. Employment of substitutes — Authorized; compensation.

38-1910. Same — Retired teachers.

Subchapter II. Foreign Exchange Program

38-1921. Authorized; eligibility.

38-1922. Payment of salary.

38-1923. Assignment of foreign teachers; loyalty oath.

Subchapter III. Repealed Provisions

38-1941 to 38-1982. [Repealed].

Subchapter I. General.

§ 38-1901. Sexual discrimination; salary deductions; employment as clerk or librarian.

In assigning salaries to teachers, no discrimination shall be made between male and female teachers employed in the same grade of school and performing a like class of duties; nor shall it be lawful to pay, or authorize or require to be paid, from any of the salaries of such teachers any portion or percentage thereof for the purpose of adding to salaries of higher or lower grades; and no such teacher shall be employed as, or required to discharge the duties of, a clerk or librarian.

(Sept. 1, 1916, 39 Stat. 695, ch. 433, § 1.)

Prior Codifications. — 1981 Ed., § 31-1001. 1973 Ed., § 31-608.

§ 38-1902. Installment payments to certain teachers.

On and after July 1, 1943, the Board of Education is authorized to designate the months in which the 10 salary payments shall be made to teachers assigned to instruction in elementary science and school gardening, and in health, physical education, and playground activities.

(July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

Prior Codifications. — 1981 Ed., § 31-1003. 1973 Ed., § 31-609a.

§ 38-1903. Teachers in the Americanization schools; custodial staff.

(a) Officers and teachers in the Americanization, evening, and summer schools may also be officers and teachers in the regular day schools.

(b) Members of the custodial staff in the evening, summer, and Americanization schools may also be members of the custodial staff in the day schools.

(July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

Prior Codifications. — 1981 Ed., § 31-1018. 1973 Ed., § 31-681.

§ 38-1904. Teaching vacancies.

Teaching vacancies which occur during any school year may be filled by the assignment of teachers of special subjects and teachers not now assigned to classroom instruction, and such teachers are hereby made eligible for such assignment without further examination.

(July 1, 1943, 57 Stat. 322, ch. 184, § 1.)

Prior Codifications. — 1981 Ed., § 31-1019. 1973 Ed., § 31-682.

§ 38-1905. Vocational education.

The Board of Education is authorized and empowered to establish occupational schools on the elementary school level for pupils not prepared to pursue vocational courses in the trade or vocational schools and also to carry on trade or vocational courses on the senior high school level or in senior high schools.

(Apr. 10, 1936, 49 Stat. 1194, ch. 175, § 4.)

Prior Codifications. — 1981 Ed., § 31-1004. 1973 Ed., § 31-614.

§ 38-1906. Classification of research assistants.

Research assistants shall be classified as teachers for payroll purposes and for retirement purposes.

(Apr. 5, 1939, 53 Stat. 568, ch. 39, § 4.)

Prior Codifications. — 1981 Ed., § 31-1006. 1973 Ed., § 31-623.

§ 38-1907. Employment of substitutes for engineer, janitor, laborer, fireman, or caretaker; salary deductions.

In the event of the absence of any engineer, assistant engineer, janitor, assistant janitor, laborer, fireman, or caretaker at any time during school

sessions the Board of Education is hereby authorized to appoint a substitute, who shall be paid the salary of the position in which employed, and the amount paid to such substitute shall be deducted from the salary of the absent employee.

(Mar. 4, 1913, 37 Stat. 956, ch. 150, § 1.)

Prior Codifications. — 1981 Ed., § 31-1007. 1973 Ed., § 31-625.

§ 38-1908. Heads of certain departments; compensation.

From and after 10 days following August 28, 1958, there shall be only one person in charge of the following departments in the public school system of the District of Columbia: Art, business education, English, foreign languages, guidance and placement, history, home economics, industrial arts, mathematics, military science and tactics, music, science, trade and industrial education, and health, physical education, athletics, and safety; except that in the case of persons reassigned pursuant to this section, nothing contained herein shall be construed to decrease the rate of compensation that any such person is receiving on the effective date of this section. If such person is placed in a lower salary class and the present salary of the incumbent falls between 2 step rates for the newly assigned class, he shall receive the higher of such rates. Whenever a department is established hereafter in the public school system of the District of Columbia there shall be but 1 person in charge of such department.

(Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 3.)

Prior Codifications. — 1981 Ed., § 31-1017. 1973 Ed., § 31-680.

§ 38-1909. Employment of substitutes — Authorized; compensation.

The Board of Education is hereby authorized to employ substitute teachers and attendance officers for service during the absence of any teacher or attendance officer on leave with pay or on leave without pay and to fix the rate of compensation to be paid such substitutes.

(Oct. 13, 1949, 63 Stat. 843, ch. 686, § 6; Aug. 5, 1953, 67 Stat. 362, ch. 319, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 22; Oct. 2, 1972, 86 Stat. 760, Pub. L. 92-454, § 3.)

Cross references. — Board of higher education, crediting of leave accumulated pursuant to this section, see § 38-1103.

Teachers' retirement system coverage, see §§ 38-2021.08, 38-2021.13.

Prior Codifications. — 1981 Ed., § 31-1028.

1973 Ed., § 31-696.

§ 38-1910. Same — Retired teachers.

Persons who have retired as teachers under the provisions of subchapter I of Chapter 20 of this title; or subchapter II of Chapter 20 of this title; or subchapter III of Chapter 83 of Title 5, United States Code; may be employed as substitute teachers in the public schools of the District of Columbia when it is not practicable otherwise to secure qualified and competent persons. Any such persons granted temporary employment under authority of this section shall continue to receive their annuities during such employment and no deduction shall be made from the compensation of such persons for retirement benefits. The service rendered by such retired teachers employed as substitute teachers shall not be used to recompute their annuities.

(Apr. 24, 1958, 72 Stat. 98, Pub. L. 85-385, § 1.)

Prior Codifications. — 1981 Ed., § 31-1029. 1973 Ed., § 31-696a.

*Subchapter II. Foreign Exchange Program.***§ 38-1921. Authorized; eligibility.**

(a) The Board of Education of the District of Columbia is authorized to participate in the teacher foreign exchange program in cooperation with the United States Office of Education.

(b) Any employee of the Board of Education of the District of Columbia who is subject to the provisions of the District of Columbia Teachers' Salary Act of 1955 [§§ 38-1963 to 38-1982, repealed] shall, with the approval of the Board of Education, be eligible to participate in such program, and shall, if accepted for such foreign assignment, serve for a period not to exceed one calendar year, and shall, at the conclusion of such service, be returned to the position which he held before the exchange was effected; provided, that in any one calendar year not more than 10 such employees shall participate in such program.

(Sept. 28, 1950, 64 Stat. 1076, ch. 1091, § 1.)

Section references. — This section is referred to in § 38-1923.

Prior Codifications. — 1981 Ed., § 31-1033. 1973 Ed., § 31-699.

References in text. — "The District of Columbia Teachers' Salary Act of 1955," referred to in subsection (b) of this section, refers to the Act of August 5, 1955, 69 Stat. 521, ch. 569.

§ 38-1922. Payment of salary.

The Board of Education of the District of Columbia is authorized to pay the full salary of the educational employee of said Board during the time such employee is performing teaching duties in a foreign country under such exchange program, in the same manner and to the same extent as if such educational employee were actually performing his teaching duties in his regularly assigned position in the public schools of the District of Columbia, and any such educational employee participating in such program shall, for

purposes of promotion, computation of annual increment, computation of service for pension credit, including salary contributions to the pension fund, and leave of absence credits, be considered as performing teaching duties in the schools of the District of Columbia.

(Sept. 28, 1950, 64 Stat. 1077, ch. 1091, § 2.)

Section references. — This section is referred to in § 38-1923. 1973 Ed., § 31-699a.

Prior Codifications. — 1981 Ed., § 31-1034.

§ 38-1923. Assignment of foreign teachers; loyalty oath.

(a) Each professionally qualified person from a foreign country exchanged under the provisions of this subchapter with an educational employee of the Board of Education of the District of Columbia shall during the period of such exchange serve as a substitute for the exchanged teacher and shall be assigned in the public schools of the District of Columbia as the Board of Education shall determine. Such exchange teacher shall serve without compensation for such service from the District of Columbia or any agency thereof; provided further, that the term of such assignment or exchange shall not exceed one calendar year.

(b) Notwithstanding any other provision of law, any foreign teacher, instructor, or professor assigned to duties in the public schools of the District of Columbia under the provisions of this subchapter shall not be required to take an oath of office or any oath of allegiance or loyalty to the United States, but shall satisfy the Board of Education of the District of Columbia as to his personal, moral, and professional fitness to teach in the public schools of Washington, District of Columbia.

(Sept. 28, 1950, 64 Stat. 1077, ch. 1091, § 3.)

Prior Codifications. — 1981 Ed., § 31-1035. 1973 Ed., § 31-699b.

Subchapter III. Repealed Provisions.

§ 38-1941. Payment of salaries. [Repealed].

Repealed.

(May 26, 1908, 35 Stat. 291, ch. 198, § 1; June 30, 1970, 84 Stat. 364, Pub. L. 91-297, title III, § 304(a); Oct. 21, 1972, 86 Stat. 1012, Pub. L. 92-518, title I, § 104(a); May 10, 1989, D.C. Law 7-231, § 30, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 31-1002. 1973 Ed., § 31-609.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 38-1942. Head of Department of Military Science and Tactics; salary. [Repealed].

Repealed.

(July 29, 1946, 60 Stat. 708, ch. 693, § 1; May 10, 1989, D.C. Law 7-231, § 31, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 31-1005. legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 38-1941.
1973 Ed., § 31-622a.
Legislative history of Law 7-231. — For

§ 38-1943. Rules for division of time and computation of pay for services. [Repealed].

Repealed.

(May 26, 1908, 35 Stat. 291, ch. 198, § 1; June 30, 1970, 84 Stat. 365, Pub. L. 91-297, title III, § 304(b); Oct. 21, 1972, 86 Stat. 1012, Pub. L. 92-518, title I, § 104(b); May 10, 1989, D.C. Law 7-231, § 32, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 31-1008. legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 38-1941.
1973 Ed., § 31-630.
Legislative history of Law 7-231. — For

§ 38-1944. Double salaries — School teachers and employees in District. [Repealed].

Repealed.

(Oct. 6, 1917, 40 Stat. 384, ch. 79, § 9; July 8, 1918, 40 Stat. 823, ch. 139, § 1; June 5, 1920, 41 Stat. 1017, ch. 253, § 1; Aug. 19, 1964, 78 Stat. 491, 493, Pub. L. 88-448, title IV, §§ 401(i), 402(a)(17), (18); Mar. 16, 1982, D.C. Law 4-78, § 15, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1009. mittee of the Whole. The Bill was adopted on first and second readings on November 10, 1981 and November 24, 1981, respectively. Signed by the Mayor on December 15, 1981, it was assigned Act No. 4-126 and transmitted to both Houses of Congress for its review.
1973 Ed., § 31-631.
Legislative history of Law 4-78. — Law 4-78 was introduced in Council and assigned Bill No. 4-326, which was referred to the Com-

§ 38-1945. Double salaries — Custodial employees in District. [Repealed].

Repealed.

(July 1, 1942, 56 Stat. 467, ch. 467; Aug. 19, 1964, 78 Stat. 491, Pub. L. 88-448, title IV, § 401(k); Mar. 16, 1982, D.C. Law 4-78, § 16, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1010. 1973 Ed., § 31-631a.
Legislative history of Law 4-78. — For

legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1946. Leave with part pay authorized; limitations. [Repealed].

Repealed.

(June 12, 1940, 54 Stat. 349, ch. 342, § 1; Mar. 16, 1982, D.C. Law 4-78, § 17, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1011.
1973 Ed., § 31-632.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1947. Report of person on leave; termination of leave. [Repealed].

Repealed.

(June 12, 1940, 54 Stat. 349, ch. 342, § 2; Mar. 16, 1982, D.C. Law 4-78, § 17, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1012.
1973 Ed., § 31-633.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1948. Leave of absence for educational purposes — compensation of elementary and secondary school teachers. [Repealed].

Repealed.

(June 12, 1940, 54 Stat. 349, ch. 342, § 3; Aug. 21, 1964, 78 Stat. 584, Pub. L. 88-472, § 1; Mar. 16, 1982, D.C. Law 4-78, § 17, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1013.
1973 Ed., § 31-634.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1949. Same — Compensation of other employees. [Repealed].

Repealed.

(June 12, 1940, 54 Stat. 349, ch. 342, § 4; Aug. 21, 1964, 78 Stat. 584, Pub. L. 88-472, § 2; Mar. 12, 1976, D.C. Law 1-53, § 2, 22 DCR 5132; Mar. 16, 1982, D.C. Law 4-78, § 17, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1014.
1973 Ed., § 31-635.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1950. Same — Inclusion for promotion and retirement purposes. [Repealed].

Repealed.

(June 12, 1940, 54 Stat. 350, ch. 342, § 5; Aug. 21, 1964, 78 Stat. 585, Pub. L. 88-472, § 3; Mar. 16, 1982, D.C. Law 4-78, § 17, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1015.
1973 Ed., § 31-636.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1951. Masculine pronoun construed to include female employees. [Repealed].

Repealed.

(June 12, 1940, 54 Stat. 350, ch. 342, § 6; Mar. 16, 1982, D.C. Law 4-78, § 17, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1016.
1973 Ed., § 31-637.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1952. Sick and emergency leave. [Repealed].

Repealed.

(Oct. 13, 1949, 63 Stat. 842, ch. 686, § 1; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 1; Dec. 18, 1967, 81 Stat. 659, Pub. L. 90-212, § 1(a); May 27, 1968, 82 Stat. 140, Pub. L. 90-319, § 5; Mar. 16, 1982, D.C. Law 4-78, § 18, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1020.
1973 Ed., § 31-691.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1953. Credit for cumulative leave on transfer or promotion. [Repealed].

Repealed.

(Oct. 29, 1951, 65 Stat. 660, ch. 601, § 4; Mar. 16, 1982, D.C. Law 4-78, § 21, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1021.
1973 Ed., § 31-691a.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1954. Reinstatement after leave without pay granted. [Repealed].

Repealed.

§ 38-1955

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(Oct. 29, 1951, 65 Stat. 661, ch. 601, § 5; Mar. 16, 1982, D.C. Law 4-78, § 21, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1022.
1973 Ed., § 31-691b.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1955. Additional leave credits for service prior to July 1, 1949. [Repealed].

Repealed.

(Oct. 13, 1949, 63 Stat. 842, ch. 686, § 2; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 2; Dec. 18, 1967, 81 Stat. 659, Pub. L. 90-212, § 1(b); Mar. 16, 1982, D.C. Law 4-78, § 18, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1023.
1973 Ed., § 31-692.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1956. Maternity leave. [Repealed].

Repealed.

(Oct. 13, 1949, 63 Stat. 843, ch. 686, § 3; Mar. 16, 1982, D.C. Law 4-78, § 18, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1024.
1973 Ed., § 31-693.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1957. Additional leaves in emergencies. [Repealed].

Repealed.

(Oct. 13, 1949, 63 Stat. 843, ch. 686, § 4; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 3; Dec. 18, 1967, 81 Stat. 659, Pub. L. 90-212, § 1(c); Feb. 19, 1976, D.C. Law 1-47, § 2, 22 DCR 4683; Mar. 16, 1982, D.C. Law 4-78, § 18, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1025.
1973 Ed., § 31-694.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1958. Days of leave with pay defined. [Repealed].

Repealed.

(Dec. 20, 1950, 64 Stat. 1114, ch. 1141, § 1; Mar. 16, 1982, D.C. Law 4-78, § 19, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1026.
1973 Ed., § 31-694a.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1959. Refund required for unearned advanced leave; exceptions. [Repealed].

Repealed.

(Oct. 13, 1949, 63 Stat. 843, ch. 686, § 5; Mar. 16, 1982, D.C. Law 4-78, § 18, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1027.
1973 Ed., § 31-695.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1960. Rules and regulations; definitions. [Repealed].

Repealed.

(Oct. 13, 1949, 63 Stat. 843, ch. 686, § 7; May 10, 1989, D.C. Law 7-231, § 33, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 31-1030.
1973 Ed., § 31-697.

Legislative history of Law 7-231. — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 38-1941.

§ 38-1961. Regulation of vacation periods and annual leave. [Repealed].

Repealed.

(Mar. 5, 1952, 66 Stat. 14, ch. 81, § 1; Mar. 16, 1981, D.C. Law 4-78, § 20, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1031.
1973 Ed., § 31-698.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1962. Prior leave; promulgation of rules. [Repealed].

Repealed.

(Mar. 5, 1952, ch. 81, § 2; Aug. 5, 1953, 67 Stat. 362, ch. 320, § 1; Mar. 16, 1981, D.C. Law 4-78, § 20, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1032.
1973 Ed., § 31-698a.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1944.

§ 38-1963. Salary schedule. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 521, ch. 569, title I, § 1; July 25, 1958, 72 Stat. 414, Pub. L. 85-552, § 1; Aug. 28, 1958, 72 Stat. 1004, Pub. L. 85-838, § 1; Sept. 13, 1960, 74 Stat. 913, Pub. L. 87-773, § 1; Oct. 24, 1962, 76 Stat. 1229, Pub. L. 87-881, title I, § 101(1); Aug. 14, 1964, 78 Stat. 431, Pub. L. 88-426, title III,

§ 306(i)(5); Sept. 2, 1964, 78 Stat. 882, Pub. L. 88-575, title II, § 201(1); Nov. 13, 1966, 80 Stat. 1594, Pub. L. 89-810, title II, § 202(1); May 27, 1968, 82 Stat. 132, Pub. L. 90-319, § 2(1); May 27, 1968, 82 Stat. 135, Pub. L. 90-319, § 2(2); June 30, 1970, 84 Stat. 358, Pub. L. 91-297, title III, § 302(1); Oct. 21, 1972, 86 Stat. 1005, Pub. L. 92-518, title I, § 102(a); Sept. 3, 1974, 88 Stat. 1042, Pub. L. 93-407, title II, § 202(1), (2); Jan. 3, 1975, 88 Stat. 2175, Pub. L. 93-635, §§ 4, 5; Mar. 29, 1977, D.C. Law 1-90, § 2(1), (2), 23 DCR 9532b; May 18, 1977, D.C. Law 2-1, § 2(a), 23 DCR 9698; Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1101.

1973 Ed., § 31-1501.

Legislative history of Law 4-78. — Law 4-78 was introduced in Council and assigned Bill No. 4-326, which was referred to the Com-

mittee of the Whole. The Bill was adopted on first and second readings on November 10, 1981 and November 24, 1981, respectively. Signed by the Mayor on December 15, 1981, it was assigned Act No. 4-126 and transmitted to both Houses of Congress for its review.

§ 38-1964. Eligibility requirements for appointment and promotion; definitions. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 524, ch. 569, title II, § 3; June 30, 1970, 84 Stat. 362, Pub. L. 91-297, title III, § 302(3); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1111.

1973 Ed., § 31-1512.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1965. Probationary period. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 524, ch. 569, title II, § 3; June 30, 1970, 84 Stat. 362, Pub. L. 91-297, title III, § 302(3); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1112.

1973 Ed., § 31-1512.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1966. Teaching certificates; renewals; rules and regulations. [Repealed].

Repealed.

(Sept. 3, 1974, 88 Stat. 1049, Pub. L. 93-407, title II, § 204; Mar. 16, 1982, D.C. Law 4-78, § 12, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1113.

1973 Ed., § 31-1513.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1967. Assignment of certain employees to salary classes. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 524, ch. 569, title III, § 4; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1232, Pub. L. 87-881, title I, § 101(4); Nov. 13, 1966, 80 Stat. 1598, Pub. L. 89-810, title II, § 202(3); June 30, 1970, 84 Stat. 362, Pub. L. 91-297, title III, § 302(4); Oct. 21, 1972, 86 Stat. 1009, Pub. L. 92-518, title I, § 103(2); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1121.
1973 Ed., § 31-1521.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1968. Application of chapter; teacher-aide positions; initial assignment of school principals and periodic evaluation. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 525, ch. 569, title III, § 5; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85-838, § 1; Nov. 13, 1966, 80 Stat. 1598, Pub. L. 89-810, title II, § 202(4); May 27, 1968, 82 Stat. 139, Pub. L. 90-319, § 2(8); June 30, 1970, 84 Stat. 362, Pub. L. 91-297, title III, § 302(5); Oct. 21, 1972, 86 Stat. 1010, Pub. L. 92-518, title I, § 103(3); Mar. 3, 1979, D.C. Law 2-139, § 3204(e), 25 DCR 5740; Mar. 5, 1981, D.C. Law 3-133, § 31(b), 27 DCR 4417; Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1122.
1973 Ed., § 31-1522.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1969. Assignment to service steps — method; promotions. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 526, ch. 569, title IV, § 6; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1233, Pub. L. 87-881, title I, § 101(5), (6); Sept. 2, 1964, 78 Stat. 885, Pub. L. 78-885, title II, § 201(2); June 30, 1970, 84 Stat. 362, Pub. L. 91-297, title III, § 302(6), (7); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1131.
1973 Ed., § 31-1531.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1970. Same — New employees; adjustment of existing employees; military service; transfer from Board of Higher Education. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 527, ch. 569, title IV, § 7; Aug. 28, 1958, 72 Stat. 1010, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101(7); Nov. 13, 1966, 80 Stat. 1599, Pub. L. 89-810, title II, § 202(5); May 27, 1968, 82 Stat. 138, Pub. L. 90-319, § 2(3); Oct. 21, 1972, 86 Stat. 1010, Pub. L. 92-518, title I, § 103(4), title II, § 203(a); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Cross references. — Annuities, purchase of service credit towards years of service, see § 38-2021.08.

Prior Codifications. — 1981 Ed., § 31-1132.

1973 Ed., § 31-1532.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1971. Probationary employees; salary increases; termination. [Repealed].

Repealed.

(May 27, 1968, 82 Stat. 138, Pub. L. 90-319, § 2(4); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1133.

1973 Ed., § 31-1533.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1972. Temporary employees. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 9; Nov. 13, 1966, 80 Stat. 1600, Pub. L. 89-810, title II, § 202(6); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1134.

1973 Ed., § 31-1534.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1973. Promotions — groups A-1, B, C, and D; administrative errors. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 10; Nov. 13, 1966, 80 Stat. 1601, Pub. L. 89-810, title II, § 202(7); May 27, 1968, 82 Stat. 138, Pub. L. 90-319, § 2(5); June 30, 1970, 84 Stat. 363, Pub. L. 91-297, title III, § 302(8); Oct. 21, 1972, 86 Stat. 1011, Pub. L. 92-518, title I, § 103(5); Mar. 29, 1977, D.C. Law 1-90, § 2(4), 23 DCR 9532b; Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1135.
1973 Ed., § 31-1535.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1974. Same — Higher-paid salary classes. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 11; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101(11); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1136.
1973 Ed., § 31-1536.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1975. Evening, summer, and Americanization schools; salaries. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 13; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1234, Pub. L. 87-881, title I, § 101(10), (11); Sept. 2, 1964, 78 Stat. 886, Pub. L. 88-875, title II, § 201(3); Nov. 13, 1966, 80 Stat. 1601, Pub. L. 89-810, title II, § 202(8); May 27, 1968, 82 Stat. 138, Pub. L. 90-319, § 2(6); May 27, 1968, 82 Stat. 139, Pub. L. 90-319, § 2(7); June 30, 1970, 84 Stat. 363, Pub. L. 91-297, title III, § 302(9), (10); Oct. 21, 1972, 86 Stat. 1008, Pub. L. 92-518, title I, §§ 102(b), 103(6); Sept. 3, 1974, 88 Stat. 1049, Pub. L. 93-407, title II, § 202(3), (4); Jan. 3, 1975, 88 Stat. 2177, Pub. L. 93-635, § 11; Mar. 29, 1977, D.C. Law 1-90, § 2(5), 23 DCR 9523b; May 18, 1977, D.C. Law 2-1, § 2(b), 23 DCR 9698; Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1141.
1973 Ed., § 31-1542.

Emergency legislation. — For temporary amendment of section, see § 206(b) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Emergency Act of 1998 (D.C. Act 12-351, May 20, 1998, 45 DCR 3673),

and § 206(b) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Congressional Review Emergency Act of 1998 (D.C. Act 12-432, August 6, 1998, 45 DCR 5920).

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1976. Appropriation for summer school salaries. [Repealed].

Repealed.

(Oct. 26, 1973, 87 Stat. 508, Pub. L. 93-140, § 22; Mar. 16, 1982, D.C. Law 4-78, § 13, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1142.

1973 Ed., § 31-1542a.

Legislative history of Law 4-78. — For

legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1977. Method of salary payment. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 14; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title I, § 101(12); June 30, 1970, 84 Stat. 364, Pub. L. 91-297, title III, § 302(11); Oct. 21, 1972, 86 Stat. 1011, Pub. L. 92-518, title I, § 103(7); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1143.
1973 Ed., § 31-1543.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1978. Regulation of vacation and leave periods of certain employees. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 15; Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title I, § 101(13); Oct. 21, 1972, 86 Stat. 1011, Pub. L. 92-518, title I, § 103(8); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1144.
1973 Ed., § 31-1544.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1979. Sick and emergency leave provisions applicable to certain employees. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 16; Aug. 28, 1958, 72 Stat. 1012, Pub. L. 85-838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title I, § 101(14); Oct. 21, 1972, 86 Stat. 1011, Pub. L. 92-518, title I, § 103(9); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1145.
1973 Ed., § 31-1545.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1980. Sabbatical leave provisions applicable to certain employees. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 17; Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1146.
1973 Ed., § 31-1546.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1981. Foreign teacher exchange program applicable to certain employees. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 18; Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Prior Codifications. — 1981 Ed., § 31-1147.
1973 Ed., § 31-1547.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

§ 38-1982. Teacher retirement provisions applicable to certain employees. [Repealed].

Repealed.

(Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 19; Oct. 21, 1972, 86 Stat. 1013, Pub. L. 92-518, title II, § 202(b); Mar. 16, 1982, D.C. Law 4-78, § 11, 29 DCR 49.)

Cross references. — Schoolteachers, retirees, reemployment as substitute teachers, see § 38-1910.

Prior Codifications. — 1981 Ed., § 31-1148.

1973 Ed., § 31-1548.

Legislative history of Law 4-78. — For legislative history of D.C. Law 4-78, see Historical and Statutory Notes following § 38-1963.

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CHAPTER 20. RETIREMENT OF PUBLIC SCHOOL TEACHERS.

Subchapter I. Retirement Before June 30, 1946

- Sec.
- 38-2001.01. Annuity — Salary deductions.
- 38-2001.02. Same — Deposit in United States Treasury.
- 38-2001.03. Retirement age; continuous employment requirements.
- 38-2001.04. Disability retirement; requirements.
- 38-2001.05. Annuity allowance.
- 38-2001.06. Minimum-service credit in cases of disability retirement.
- 38-2001.07. Appropriations for annuity; reserves; interest.
- 38-2001.08. Credit for service outside District.
- 38-2001.09. Refund on leaving service; reinstatement.
- 38-2001.10. Death of teacher — Designation of beneficiary.
- 38-2001.10a. Same — Precedence of payments.
- 38-2001.11. Consent to deductions.
- 38-2001.12. Discharge of teachers.
- 38-2001.13. Definitions.
- 38-2001.14. Records to be kept by Mayor.
- 38-2001.15. [Omitted].
- 38-2001.16. Rules and regulations.
- 38-2001.17. Funds not subject to assignment, execution or levy.
- 38-2001.18. Application of subchapter — Annuities from other governments.
- 38-2001.19. Same — Annuities under prior act.

Subchapter II. Retirement After June 30, 1946

PART A

General

- 38-2021.01. Salary deductions; deposit; purchase of annuity.
- 38-2021.01a. Retirement credit for leave without pay.
- 38-2021.02. Retirement and Annuity Fund; income from investments; separate accounts.
- 38-2021.03. Voluntary and involuntary retirement.
- 38-2021.04. Disability retirement.
- 38-2021.05. Computation of annuity; options.
- 38-2021.06. Annuity of teachers retired for disability.
- 38-2021.07. [Omitted].
- 38-2021.08. Basis for determining annuity amount.
- 38-2021.09. Deferred annuity; annuity to survivors.

Sec.

- 38-2021.10. Payment of beneficiaries.
- 38-2021.11. Consent to deductions.
- 38-2021.12. Discharge of teacher.
- 38-2021.13. Definitions.
- 38-2021.14. Records and accounts; report to Congress.
- 38-2021.15. [Omitted].
- 38-2021.16. [Repealed].
- 38-2021.17. Funds not assignable or subject to execution.
- 38-2021.18. Applicability.
- 38-2021.19. Recomputation of annuities.
- 38-2021.20. [Omitted].
- 38-2021.21. Adjustment of annuities on basis of price index; computation; definitions.
- 38-2021.22. [Omitted].
- 38-2021.23. Increased annuities for certain surviving spouses or domestic partners.
- 38-2021.24. Rollovers; purchase of service credit.
- 38-2021.25. Internal Revenue Code limits.

PART B

Additional Annuity Provisions

Subpart I. Increased Annuities

- 38-2023.01. Annuity increase.
- 38-2023.02. Annuity for unremarried widow or widower.
- 38-2023.03. Effective dates of annuities provided by §§ 38-2023.01 and 38-2023.02; computation.
- 38-2023.04. Payment of annuity increase.

Subpart II. General

- 38-2023.11. Recomputation of benefits.
- 38-2023.12. Annuity increase.
- 38-2023.13. Application of amendment to § 38-2021.21.
- 38-2023.14. Computation of interest.
- 38-2023.15. Waiver of annuity; revocation.
- 38-2023.16. Tax-sheltered annuity program.

Subchapter III. Retirement Incentive Program

- 38-2041.01. Retirement Incentive Program.

Subchapter IV. Miscellaneous

- 38-2061.01. Employment of retired teachers.
- 38-2061.02. Retirement credit for leave without pay.

*Subchapter I. Retirement Before June 30, 1946.***§ 38-2001.01. Annuity — Salary deductions.**

(a) There shall be deducted and withheld from the annual salary of every teacher in the public schools of the District of Columbia an amount computed to the nearest tenth of a dollar that will be sufficient, with interest thereon at 4 per centum per annum, compounded annually, to purchase, under the provisions of this subchapter, an annuity equal to 1% of his average annual salary received during the 10 years immediately preceding retirement, for each year of his whole term of service rendered after June 30, 1926, payable monthly throughout life, for every such teacher who shall be retired, as herein provided.

(b) The deductions herein provided for shall be based on such annuity table or tables as the Council of the District of Columbia shall direct; provided, however, that said deductions shall in no case exceed 8% of his annual salary; and provided further, that when the annual salary exceeds \$2,000 the deductions and benefits shall be made as on an annual salary of \$2,000.

(c) The Council of the District of Columbia shall cause to be filed with the Board of Education on September 10th of each year a certificate showing the amount of deduction to be made from the salary of each teacher during the year, said deduction to be made in equal amounts, one to be deducted for each school month. A similar certificate shall be filed not later than the 15th day of each calendar month to cover cases of new entrants. No deduction shall be made from less than an entire month's salary.

(Jan. 15, 1920, 41 Stat. 387, ch. 39, § 1; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

Section references. — This section is referred to in §§ 1.621.03 and 1-621.04.

Prior Codifications. — 1981 Ed., § 31-1201.

1973 Ed., § 31-701.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(237) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2001.02. Same — Deposit in United States Treasury.

The amount so deducted and withheld from the annual salary of every teacher shall be deposited in the Treasury of the United States and shall be credited, together with interest at 4% per annum, compounded annually, to an individual account of the teacher from whose salary the deduction is made, which account shall be kept by the Auditor of the District of Columbia. The

fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter.

(Jan. 15, 1920, 41 Stat. 387, ch. 39, § 2; June 11, 1926, 44 Stat. 727, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1202.

1973 Ed., § 31-702.

Editor's notes. — Office of Auditor abolished: The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, and effective September 2, 1952, established, under the direction and control of the Board of Commissioners, a Department of General Administration headed by a Director. The Order transferred to the Director of General Administration all of the functions of the Office of Auditor. Reorganization Order No. 19 established the Internal Audit Office headed by an Internal Audit Officer in the Department of General Administration. The function of certifying as to the accuracy of the yearly financial statement of the Armory Board was transferred to the Internal Audit Office. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorga-

nization Order Nos. 3 and 19 were revoked by Organization Order No. 3 of the Commissioner of the District of Columbia, dated December 13, 1967. Organization Order No. 3 established within the newly created Department of General Administration an Internal Audit Office and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969. Part IVB of Organization Order No. 3 and that portion of paragraph 4 of Commissioner's Order No. 69-96 pertaining to a transfer of audit functions to the Department of Finance and Revenue were revoked by Organization Order No. 33, dated July 14, 1972. The latter Order established an Office of Municipal Audit and Inspection and prescribed the functions thereof. Organization Order No. 50, dated December 31, 1974, established the Office of Budget and Management Systems, and transferred to that office the functions of the Municipal Audit Office. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1977, which Order established the Office of Budget and Revenue Development.

§ 38-2001.03. Retirement age; continuous employment requirements.

Any teacher who shall have reached the age of 62 may be retired by the Board of Education on its own motion, or shall be retired if application is made by the teacher. Any teacher who shall have reached the age of 70 shall be retired unless, in the judgment of two thirds of the Board of Education, such teacher should be longer retained for the good of the service; provided, that no sum shall be paid to any teacher upon his retirement under the provisions of this section unless he shall have been continuously employed as a teacher in the public schools of the District of Columbia from the time of his attainment of the age of 52 years.

(Jan. 15, 1920, 41 Stat. 388, ch. 39, § 3; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1203.

1973 Ed., § 31-703.

§ 38-2001.04. Disability retirement; requirements.

Any teacher who shall have reached the age of 45, and who shall have been continuously employed in the public schools of the District of Columbia for not less than 10 years immediately prior to his retirement, or who shall have been continuously employed for not less than 15 years prior to his retirement and who by reason of accident or illness not due to vicious habits has acquired a physical or mental disability and is incapable of satisfactorily performing the duties of his position, may be retired by the Board of Education under the provisions hereinafter stated; provided, that absence of any teacher on authorized leave of absence without pay for a period not in excess of 2 years shall not constitute a break in continuous employment; provided further, that no teacher shall be retired by the Board of Education under the provisions of this section until said teacher shall have been examined under the direction of the health officer of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of two-thirds of the members of the Board of Education shall have been found to be physically or mentally incapacitated for efficient service.

(Jan. 15, 1920, 41 Stat. 388, ch. 39, § 4; June 11, 1926, 44 Stat. 728, ch. 556, § 1; Apr. 24, 2007, D.C. Law 16-305, § 55, 53 DCR 6198; Mar. 25, 2009, D.C. Law 17-353, § 172(c), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 31-1204.

1973 Ed., § 31-704.

Effect of amendments. — D.C. Law 16-305 substituted “has acquired a physical or mental disability and is” for “has become physically or mentally disabled and”.

D.C. Law 17-353 validated a previously made technical correction.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 38-911.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

§ 38-2001.05. Annuity allowance.

Every teacher who shall be retired under the provisions of § 38-2001.03 or § 38-2001.04 shall receive during the remainder of his life a combined annuity composed of:

(1) An annuity equal to 1% of his average annual salary received during the 10 years immediately preceding retirement for each year of his whole term of service after June 30, 1926;

(2) A sum equal to 1% of his average annual salary received during the 10 years immediately preceding retirement for each year of his whole term of service prior to July 1, 1926, but not to exceed 40 years; and

(3) An additional sum of \$15 for each year of said service, but in neither case to exceed 40 years, such annuity to be fixed at the nearest multiple of 12 cents and to be payable monthly and to cease and determine at his death.

(Jan. 15, 1920, 41 Stat. 388, ch. 39, § 5; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

§ 38-2001.06

EDUCATIONAL INSTITUTIONS

Prior Codifications. — 1981 Ed., § 31-1205. 1973 Ed., § 31-705.

§ 38-2001.06. Minimum-service credit in cases of disability retirement.

In calculating, as provided in § 38-2001.05, the 3rd part of the annuity of a teacher retired under the provisions of § 38-2001.04, a minimum credit of 20 years shall be used in determining the sum allowable to a teacher with less than 20 years of service.

(Jan. 15, 1920, 41 Stat. 388, ch. 39, § 6; June 11, 1926, 44 Stat. 728, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1206. 1973 Ed., § 31-706.

§ 38-2001.07. Appropriations for annuity; reserves; interest.

(a) The second and third parts of the annuity provided for by § 38-2001.05 shall be paid by appropriations from the same fund as the current expenses of the District of Columbia were paid on June 11, 1926, or may thereafter be paid.

(b) The reserves created as the result of such annual appropriations shall be held by the Treasurer of the United States separate from the fund created by the contributions of the teachers, and the fund shall be credited with interest at 4% per annum, compounded annually. The fund thus created shall be held and invested by the Treasurer of the United States until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this subchapter.

(Jan. 15, 1920, 41 Stat. 388, ch. 39, § 7; June 11, 1926, 44 Stat. 728, ch. 556, § 1; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 146(c)(1).)

Section references. — This section is referred to in § 38-2021.02. 1973 Ed., § 31-707.

Prior Codifications. — 1981 Ed., § 31-1207.

§ 38-2001.08. Credit for service outside District.

In computing length of service of retiring teachers credit may be given, year for year, but not to exceed 10 years, for public school service or its equivalent outside the District of Columbia; provided, that no credit for service outside of the public schools of the District of Columbia shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement fund of the District of Columbia a sum equal to the contributions that would have been required of the teacher if such service had been rendered in the public schools of the District of Columbia, with interest thereon at 4% per annum, compounded

annually, said contributions to be based on the average annual salary of the class to which the teacher is appointed; provided further, that when the average annual salary of the class exceeds \$2,000 the contributions shall be based on a salary of \$2,000; provided further, that if the teacher so elects he may deposit the required sum in the fund in any number of monthly installments not exceeding 100, with interest at 4% per annum, compounded annually; and provided further, that the provisions of this subchapter shall not apply to any teacher who receives an annuity from any state or municipality other than the District of Columbia, nor to allow any teacher more than one year's credit for all services rendered in any one fiscal year.

(Jan. 15, 1920, 41 Stat. 388, ch. 39, § 8; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1208. 1973 Ed., § 31-708.

§ 38-2001.09. Refund on leaving service; reinstatement.

(a) Upon separation of any teacher from the service of the public schools of the District of Columbia, except for retirement under § 38-2001.03 or § 38-2001.04, he shall receive the amount of his deductions, together with the interest then credited thereon.

(b) No teacher who shall withdraw the amount of his deductions under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him; provided, that the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding 100, with interest at 4% compounded annually, but no credit for previous service shall be given in any case of retirement where the teacher has been separated from teaching service in any public school system for more than 5 years.

(Jan. 15, 1920, 41 Stat. 388, ch. 39, § 9; June 11, 1926, 44 Stat. 729, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1209. 1973 Ed., § 31-709.

§ 38-2001.10. Death of teacher — Designation of beneficiary.

Every teacher from whose salary retirement deductions are made in accordance with this subchapter shall be required to designate in writing a beneficiary or beneficiaries to whom the amount of his deductions, together with interest then credited thereon, shall be payable in the event of the death of such teacher.

(Jan. 15, 1920, 41 Stat. 389, ch. 39, § 10; June 11, 1926, 44 Stat. 729, ch. 556, § 1; Apr. 5, 1939, 53 Stat. 571, ch. 42, § 1.)

Prior Codifications. — 1981 Ed., § 31-1210. 1973 Ed., § 31-710.

§ 38-2001.10a. Same — Precedence of payments.

In the event of death of any such teacher the order of precedence of payments shall be as follows: first, to the beneficiary, or beneficiaries, designated in writing by the teacher and recorded on his or her individual account; second, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor, or administrator, of the estate; third, if there be no such beneficiary, or if an executor or administrator be not appointed within 6 months after the death of such teacher, payment shall be made into the registry of the court having probate jurisdiction.

(Apr. 5, 1939, 53 Stat. 571, ch. 42, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 158(g).)

Cross references. — Probate jurisdiction, 1973 Ed., § 31-711. see §§ 11-501, 11-921.

Prior Codifications. — 1981 Ed., § 31-1211.

§ 38-2001.11. Consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after January 15, 1920, as well as every person who on and after January 15, 1920, may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for in this subchapter; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this subchapter, notwithstanding the provisions of said Public Act No. 254, approved June 20, 1906, and of any other law, rule or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia.

(Jan. 15, 1920, 41 Stat. 389, ch. 39, § 11; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1212. 1973 Ed., § 31-712. approved June 20, 1906,” referred to near the end of the section, refers to the Act of June 20, 1906, 34 Stat. 316, ch. 3446.

References in text. — “Public Act No. 254,

§ 38-2001.12. Discharge of teachers.

Nothing in this subchapter shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law.

(Jan. 15, 1920, 41 Stat. 389, ch. 39, § 12; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1213. 1973 Ed., § 31-713.

§ 38-2001.13. Definitions.

The term “teacher,” under this subchapter, shall include all teachers permanently employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in the Act approved June 20, 1906, and acts amendatory thereof, except the employees of the Recreation Board and the Department of School Attendance and Work Permits; the term “annual salary” shall be construed to mean the total annual income received during the fiscal year for services rendered in the public day schools of the District of Columbia, including basic salary, longevity allowance, session room allowance, and increase of compensation (bonus); and whenever the pronoun “his” occurs in this subchapter it shall be construed to mean both male and female teachers.

(Jan. 15, 1920, 41 Stat. 389, ch. 39, § 13; June 11, 1926, 44 Stat. 730, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1214.

1973 Ed., § 31-714.

References in text. — The “Act approved

June 20, 1906,” referred to near the beginning of the section, refers to the Act of June 20, 1906, 34 Stat. 316, ch. 3446.

§ 38-2001.14. Records to be kept by Mayor.

The Mayor of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this subchapter. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers.

(Jan. 15, 1920, 41 Stat. 389, ch. 39, § 14; June 11, 1926, 44 Stat. 730, ch. 556, § 1; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 146(c)(2).)

Prior Codifications. — 1981 Ed., § 31-1215.

1973 Ed., § 31-715.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

§ 38-2001.15. [Omitted].

§ 38-2001.16. Rules and regulations.

The Mayor of the District of Columbia is hereby authorized to perform, or cause to be performed, any or all acts and the Council of the District of Columbia is hereby authorized to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this subchapter into full force and effect.

(Jan. 15, 1920, 41 Stat. 390, ch. 39, § 16; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

Cross references. — Rules and regulations, authority of Council to adopt, see § 1-303.03.

Prior Codifications. — 1981 Ed., § 31-1216.

1973 Ed., § 31-717.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(238) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2001.17. Funds not subject to assignment, execution or levy.

None of the money mentioned in this subchapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process.

(Jan. 15, 1920, 41 Stat. 390, ch. 39, § 17; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1217.

1973 Ed., § 31-718.

§ 38-2001.18. Application of subchapter — Annuities from other governments.

The provisions of this subchapter shall not apply to any teacher who receives an annuity from any state or municipality other than the District of Columbia.

(Jan. 15, 1920, 41 Stat. 390, ch. 39, § 18; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

Prior Codifications. — 1981 Ed., § 31-1218. 1973 Ed., § 31-719.

§ 38-2001.19. Same — Annuities under prior act.

The provisions of this subchapter shall apply to: (1) all teachers who were on the rolls of the public schools of the District of Columbia for the month of June, 1926, if otherwise eligible; and (2) all teachers who, on June 30, 1926, were receiving an annuity under the provisions of this subchapter, the annuity to be paid each such teacher after June 30, 1926, to be computed in the manner provided herein; provided, that nothing in this subchapter shall be construed to require a reduction in the amount of the annuity being paid to any teacher on July 1, 1926.

(Jan. 15, 1920, 41 Stat. 389, ch. 39, § 19; June 11, 1926, 44 Stat. 731, ch. 556, § 1.)

Cross references. — Federal City College, assumption of the District of Columbia Teachers College, retirement benefits of educational employees, election, see § 38-1103.

Schoolteachers, retirees, reemployment as substitute teachers, see § 38-1910.

Prior Codifications. — 1981 Ed., § 31-1219.

1973 Ed., § 31-720.

Subchapter II. Retirement After June 30, 1946.

PART A.

GENERAL.

§ 38-2021.01. Salary deductions; deposit; purchase of annuity.

(a) Beginning on the first day of the first pay period which begins after December 31, 1969, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 7% of the teacher's annual salary; except that in the case of teachers hired on or after the first day of the first pay period that begins after October 29, 1996, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 8% of the teacher's annual salary. The amounts deducted and withheld from the annual salary of each teacher, including amounts so deducted and withheld prior to July 1, 1946, under subchapter I of this chapter, shall be credited to an individual account of the teacher from whose salary the deduction is made, together with interest at 4% per annum, compounded annually up to July 1, 1946, and thereafter at 3% per annum, compounded annually from December 31st of the year in which the deductions are made; provided, that such interest shall not be credited after December 31, 1956, except that in the case of a teacher separated before he has completed 5 years

of eligible service interest shall be credited to the date of separation or the end of the 90-day period beginning on November 17, 1979, whichever is earlier. These individual interest-bearing accounts shall be kept by the Custodian of Retirement Funds. After the end of the 90-day period beginning on November 17, 1979, any amounts deducted and withheld pursuant to this subsection shall be paid to the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a).

(b) Any teacher may at his option and under such regulations as may be prescribed by the District of Columbia Retirement Board deposit with the Custodian of Retirement Funds additional sums in multiples of \$25 but not to exceed 10% per annum of his annual salary, pay, or compensation for services rendered since March 1, 1920, which amount together with interest thereon computed in accordance with § 38-2023.14(a) shall, at the date of his retirement, be available to purchase an annuity as he shall elect in accordance with such rules and regulations as may be prescribed by the District of Columbia Retirement Board, in addition to the annuity provided by this part; the purchase price of such annuity shall be based upon the interest rate computed in accordance with § 38-2023.14(a) and upon such table of mortality as shall from time to time be prescribed by the Board. In the event of death or separation from the service of such teacher before becoming eligible for retirement on annuity, the amounts so deposited with interest at 3% compounded annually from December 31st of the year in which the deposits are made to the date of such death or separation or the end of the 90-day period beginning on November 17, 1979, whichever is earlier shall be refunded in accordance with the provisions of §§ 38-2021.09 and 38-2021.10, respectively. A separate individual account shall be kept by the Custodian of Retirement Funds with respect to the voluntary deposits and interest of each teacher.

(Aug. 7, 1946, 60 Stat. 875, ch. 779, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 21; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 747, Pub. L. 90-231, § 1(1); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(d)(1); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(1)(A), 253(a)(1); Mar. 24, 1990, D.C. Law 8-97, § 4, 37 DCR 1046; Apr. 9, 1997, D.C. Law 11-218, § 4(a), 43 DCR 6172; Apr. 13, 2005, D.C. Law 15-354, § 55(a), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 60, 53 DCR 6794.)

Cross references. — District of Columbia teachers retirement fund, see § 1-713.

Election of educational employees of the Teachers College to remain subject to provisions of subchapter, see § 38-1103.

Section references. — This section is referred to in §§ 1-626.01, 1-713, 1-903.02, 38-2021.04, 38-2021.08, 38-2021.09, and 38-2023.14.

Prior Codifications. — 1981 Ed., § 31-1221.

1973 Ed., § 31-721.

Effect of amendments. — D.C. Law 15-

354, in subsec. (b), substituted "District of Columbia Retirement Board" for "Council of the District of Columbia" and substituted "prescribed by the District of Columbia Retirement Board" for "prescribed by the Council, in".

D.C. Law 16-191, in subsec. (b), validated a previously made technical correction.

Emergency legislation. — For temporary amendment of section, see § 2 of the Board of Education Early-Out Retirement for "ET" Employees Emergency Amendment Act of 1996 (D.C. Act 11-262, April 18, 1996, 43 DCR 2177).

For temporary amendment of section, see

§ 4(a) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and 4(a) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3,

Legislative history of Law 8-97. — Law 8-97 was introduced in Council and assigned Bill No. 8-267, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 19, 1989, and January 16, 1990, respectively. Signed by the Mayor on January 26, 1990, it was assigned Act No. 8-149 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-135. — Law 10-135, the “Full Funding of Pension Liability Retirement Reform Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-515, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 1, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-239 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-218. — Law 11-218, the “New Hire Police Officers, Fire Fighters, and Teachers Pension Modification Amendment Act of 1996,” was introduced in Council and assigned Bill No. 11-316. The Bill was adopted on first and second readings on July 3, 1996 and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-432 and transmitted to both Houses of Congress for its review. D.C. Law 11-218 became effective on April 9, 1997.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 38-1202.01.

Editor’s notes. — Full Funding of Pension Liability Retirement Reform Amendment Act of 1994: Section 311 of D.C. Law 10-135 amended (a) by inserting “(or, with respect to each pay period which begins on or after October 1, 1995, 8 per centum)” following “7 %” in the first sentence.

Section 401 of D.C. Law 10-135 provided that notwithstanding any other law, title I,

§§ 101(b)(1) and (2), and titles II and III shall apply to any action or transaction taken or undertaken with respect to the Police Officers and Fire Fighters’ Retirement Fund, the Teachers’ Retirement Fund and the Judges’ Retirement Fund on and after October 1, 1995.

Section 501 of D.C. Law 10-135 provided that the act shall take effect on the later of: (1) completion of a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-2-33(c)(1), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations; or (2) enactment by Congress of titles II and III of this act and of an amendment to D.C. Code § 11-1563 which amends the first sentence in subsection (a) by inserting after “per centum” the following: “(or, with respect to each pay period which begins on or after October 1, 1995, 4 ½ per centum)” and an amendment to D.C. Code § 11-1564(d)(1) which inserts after “United States Code,” the following: “with respect to services performed before October 1, 1995, and equal to 4 ½ per centum of such salary, pay, or compensation with respect to services performed on or after October 1, 1995.”

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(239) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2021.01a. Retirement credit for leave without pay.

(a) Any teacher who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of teachers, for the purpose of bargaining with the District of Columbia concerning grievances, disputes, hours of employment, or conditions of work, may, within

60 days after entering on such leave without pay, file with the Board of Education of the District of Columbia an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the teachers' retirement fund established pursuant to this part, through the Board of Education, amounts equal to the retirement deductions plus additional amounts equivalent to such amounts, in lieu of District of Columbia contributions which would be applicable if he were in pay status. A teacher who is on approved leave without pay and serving as a full-time officer or employee of such an organization on May 22, 1970, may similarly make such election within 60 days after such date. If the election and all payments herein provided are not made, the teacher shall receive no credit for such periods of leave without pay occurring on or after May 22, 1970.

(b) A teacher may deposit, with interest computed in accordance with § 38-2023.14(b), an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, prior to May 22, 1970, as a full-time officer or employee of an organization composed primarily of teachers, and may receive full retirement credit for such period or periods of leave without pay. In the event of the death of such teacher, any individual entitled to annuity under this part may make such deposit.

(Aug. 7, 1946, ch. 779, § 1A; May 22, 1970, 84 Stat. 259; Pub. L. 91-263, § 3; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 253(a)(2).)

Section references. — This section is referred to in §§ 38-2021.04, and 38-2023.14. 1973 Ed., § 31-721a.

Prior Codifications. — 1981 Ed., § 31-1222.

§ 38-2021.02. Retirement and Annuity Fund; income from investments; separate accounts.

Until the end of the 90-day period beginning on November 17, 1979, the amounts so deducted and withheld from the annual salary of every teacher, and the amounts of additional voluntary deposits, shall be deposited in the Treasury of the United States to the credit of the Teachers' Retirement and Annuity Fund. As of July 1, 1946, there shall be transferred and credited to such fund the balances of funds held for the retirement of teachers under the provisions of §§ 38-2001.02 and 38-2001.07. The fund thus created shall be held and invested by the Secretary of the Treasury until paid out as hereinafter provided, and the income derived from such investment shall constitute a part of said fund for the purpose of carrying out the provisions of this part, and for payment of administrative expenses incurred by the Mayor of the District of Columbia in placing in effect each annuity adjustment granted under § 38-2023.14. Separate accounts shall be maintained by the Treasury with respect to:

- (1) The regular operations of the retirement system, exclusive of those incident to the voluntary deposits; and
- (2) The voluntary deposits and the supplementary annuities and refunds resulting from such deposits.

(Aug. 7, 1946, 60 Stat. 876, ch. 779, § 2; July 5, 1966, 80 Stat. 267, Pub. L. 89-494, § 2; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 123(b)(1)(B).)

Cross references. — District of Columbia teachers retirement fund, see § 1-713.

Section references. — This section is referred to in §§ 1-713, 38-2021.04, and 38-2023.13.

Prior Codifications. — 1981 Ed., § 31-1223.

1973 Ed., § 31-722.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2021.03. Voluntary and involuntary retirement.

(a) Any teacher who completes 5 years of eligible service and who is separated from the service: (1) after becoming 55 years of age and completing 30 years of service; (2) after becoming 60 years of age and completing 20 years of service; (3) after becoming 62 years of age; or (4) in the case of any teacher hired on or after the first day of the first pay period which begins after October 29, 1996, after completing 30 years of service; is entitled to an annuity.

(b) Any teacher who completes 5 years of eligible service and who is involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after: (1) completing 25 years of service; or (2) becoming 50 years of age and completing 20 years of service; is entitled to an annuity reduced by one sixth of 1% for each full month such teacher is under the age of 55 years at the date of his separation from the service.

(c) Repealed.

(d)(1) The length of a teacher's service shall be computed in accordance with § 38-2021.08.

(2) The amount of an annuity authorized by this section shall be computed in accordance with § 38-2021.05.

(3) Each annuity authorized by this section shall commence on the day after the teacher is separated from the service and shall terminate on the date the teacher dies.

(e) Any teacher who completes 5 years of vested service may voluntarily retire from the service on or before December 31, 1980, after completing 20 years of service and shall be entitled to an annuity computed in accordance with subsection (b) of this section; provided, that the amortization payment to the District of Columbia Retirement Board for the District of Columbia Teachers' Retirement Fund shall be made from appropriations of the Board of Education; except that any teacher hired on or after the first day of the first pay period which begins after October 29, 1996, who completes 30 years of service shall be entitled to an annuity computed in accordance with § 38-2021.05.

(f)(1) In the event of a major reorganization, a major reduction in force, or a major transfer of functions in which a significant percentage of Board of Education employees will be separated or subject to an immediate reduction in the rate of basic pay or a furlough, the Board of Education is authorized to offer voluntary retirement to the following eligible teachers:

(A) Teachers who have completed 25 years of service; and

(B) Teachers who have reached 50 years of age and completed 20 years of service.

(2) Teachers who accept voluntary retirement under paragraph (1) of this subsection shall:

(A) Receive an annuity reduced by $\frac{1}{6}$ of 1% for each full month such teacher is under the age of 55 years at the date of his or her separation from the service; and

(B) Be eligible for the early out retirement incentive program established by § 38-2021.03.

(Aug. 7, 1946, 60 Stat. 876, ch. 779, § 3; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 2; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 747, Pub. L. 90-231, § 1(2); Mar. 4, 1981, D.C. Law 3-128, § 9, 28 DCR 246; Mar. 5, 1981, D.C. Law 3-133, § 5, 27 DCR 4417; May 21, 1988, D.C. Law 7-111, § 2, 35 DCR 2674; Sept. 26, 1995, D.C. Law 11-52, § 902, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-218, § 4(b), 43 DCR 6172.)

Section references. — This section is referred to in §§ 38-2021.04, 38-2021.05, and 38-2021.09.

Prior Codifications. — 1981 Ed., § 31-1224.

1973 Ed., § 31-723.

Emergency legislation. — For temporary amendment of section, see § 4(b) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and 4(b) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Legislative history of Law 3-128. — Law 3-128 was introduced in Council and assigned Bill No. 3-394, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on January 7, 1981, it was assigned Act No. 3-337 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-133. — Law 3-133 was introduced in Council and assigned Bill No. 3-273, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on July 29, 1980, and September 16,

1980, respectively. Signed by the Mayor on October 2, 1980, it was assigned Act No. 3-254 and transmitted to both Houses for Congress for its review.

Legislative history of Law 7-111. — Law 7-111 was introduced in Council and assigned Bill No. 7-393, which was referred to the Committee on Education and Libraries. The Bill was adopted on first and second readings on March 1, 1988 and March 15, 1988, respectively. Signed by the Mayor on March 31, 1988, it was assigned Act No. 7-157 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-253. — Law 10-253, the "Multiyear Budget Spending Reduction and Support Temporary Act of 1995," was introduced in Council and assigned Bill No. 10-857. The Bill was adopted on first and second readings on December 21, 1994, and January 3, 1995, respectively. Deemed approved without the signature of the Mayor, it was assigned Act No. 10-401 and transmitted to both Houses of Congress for its review. D.C. Law 10-253 became effective on March 23, 1995.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 38-2021.21.

Legislative history of Law 11-218. — For legislative history of D.C. Law 11-218, see Historical and Statutory Notes following § 38-2021.01.

§ 38-2021.04. Disability retirement.

(a) Any teacher who completes 5 years of eligible service, and who, before becoming eligible for retirement under the conditions defined in §§ 38-2021.01 to 38-2021.03, acquires a physical or mental disability and is incapable of satisfactorily performing the duties of his position by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the teacher, shall upon his own application or upon order of the Board of Education as provided later in this section be retired on an annuity computed in accordance with the provisions of §§ 38-2021.05 and 38-2021.06 and beginning on the day after his pay ceases and he meets the service and disability requirements for title to annuity. Proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than 5 years next prior to having a disability for useful and efficient service shall not be required in any case. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within 6 months thereafter. No teacher shall be retired under the provisions of this section unless examined under the direction of the Director of the Department of Human Services of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of the Superintendent of Schools concurred in by two thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service.

(b) Every annuitant retired under the provisions of this section, unless the disability for which retired be permanent in character, shall at the expiration of one year from the date of such retirement and annually thereafter, until reaching retirement age as defined in § 38-2021.03, be examined under the direction of the Director of the Department of Human Services of the District of Columbia in order to ascertain the nature and degree of the annuitant's disability, if any. If an annuitant shall recover before reaching retirement age he shall be reappointed by the Board of Education in accordance with such rules and regulations as the said Board may prescribe to the first position, equal or similar to any position in the public schools occupied by the annuitant before retirement, which becomes vacant after the date the Board of Education receives written notification from the Director of the Department of Human Services of the District of Columbia that the annuitant has recovered and is able to discharge his duties as a teacher in the public schools of the District of Columbia. Payment of the annuity shall be continued until the date of reappointment by the Board of Education. In the event that the annuitant refuses to accept the employment prescribed in this section no annuity shall be paid after the date of such refusal. Should the annuitant fail to appear for examination as required under this section, payment of the annuity shall be suspended until continuance of the disability shall have been satisfactorily established. Upon written recommendation of the Superintendent of Schools, the Board of Education may order or direct at any time such medical or other examination as it shall deem necessary to determine the facts relative to the nature and degree of disability of any teacher retired on an annuity under this section.

(b-1) Any initiation, termination, or change of annuity payments made under subsection (b) of this section shall be subject to review and final determination by the District of Columbia Retirement Board.

(c) Notwithstanding the foregoing provisions of this section, if during any calendar year an annuitant who is receiving a disability annuity under this section and who has not reached retirement age (as defined in § 38-2021.03) receives income from wages or self-employment, or both, in an amount not less than 80% of the current rate of pay of the position occupied by the annuitant before retirement, the annuity of such annuitant shall be terminated by the District of Columbia Retirement Board effective January 1st of the first calendar year after such calendar year, except that this sentence shall not apply with respect to income received during the year in which the annuitant retired. The annuity of any annuitant whose annuity is terminated under the preceding sentence shall be restored, at the rate which would have been in effect but for such termination, effective January 1st of any year following a year during which the amount of such annuitant's income from wages and self-employment is less than 80% of the current rate of pay of the position occupied by the annuitant before retirement, or effective immediately if the District of Columbia Retirement Board determines that, outside of normal fluctuations in such annuitant's income, such annuitant's income is reduced to a level which on an annual basis is less than 80% of such current rate of pay.

(d) In all cases where the annuity is discontinued under the provisions of this section, so much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest shall be charged against his individual account and, unless he shall become reemployed in a position under the purview of this part, he shall be considered as having been separated from the service for other than retirement purposes and entitled to the benefits of § 38-2021.09 hereof; provided, however, that if such teacher were also receiving an annuity because of voluntary deposits made under the provisions of § 38-2021.01, such annuity may be continued or, at the option of the teacher, the actuarial reserve value of such annuity may be withdrawn in cash unless the teacher is reemployed in a position within the purview of this part, in which case the amount of such reserve value shall be treated as a voluntary deposit under the provisions of § 38-2021.01.

(Aug. 7, 1946, 60 Stat. 877, ch. 779, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 3; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 747, Pub. L. 90-231, § 1(3); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 256; Apr. 13, 2005, D.C. Law 15-354, § 55(b), 52 DCR 2638; Apr. 24, 2007, D.C. Law 16-305, § 56, 53 DCR 6198.)

Section references. — This section is referred to in §§ 38-2021.05, 38-2023.11, 38-2021.06, and 38-2021.09.

Prior Codifications. — 1981 Ed., § 31-1225.
1973 Ed., § 31-724.

Effect of amendments. — D.C. Law 15-354 added subsec. (b-1); and, in subsec. (c), substituted "District of Columbia Retirement Board" for "Board of Education".

D.C. Law 16-305, in subsec. (a), substituted "acquires a physical or mental disability and is"

for “becomes physically or mentally disabled and” and “having a disability” for “becoming so disabled”.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 38-911.

Editor's notes. — Office of Director of Public Health abolished: Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implement-

ing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

§ 38-2021.05. Computation of annuity; options.

(a) Except as otherwise provided in this part, every teacher who shall be retired under the provisions of § 38-2021.03 or § 38-2021.04 shall receive an annuity composed of: (1) the larger of: (A) one and one-half per centum of the average salary as defined in § 38-2021.13, multiplied by so much of the total service as does not exceed 5 years; or (B) one per centum of the average salary, plus \$25, multiplied by so much of the total service as does not exceed 5 years; plus (2) the larger of: (A) one and three-quarters per centum of the average salary multiplied by so much of the total service as exceeds 5 years but does not exceed 10 years; or (B) one per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds 5 years but does not exceed 10 years; plus (3) the larger of: (A) two per centum of the average salary multiplied by so much of the total service as exceeds 10 years; or (B) one per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds 10 years. Notwithstanding the preceding sentence, every teacher retired under the provisions of § 38-2021.03 or § 38-2021.05 who is hired on or after the first day of the first pay period that begins after October 29, 1996 shall receive an annuity equal to 2% of the average salary as defined in § 38-2021.13 multiplied by the number of years of the teacher's creditable service. Each annuity is stated as an annual amount, one twelfth of which, fixed at the nearest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued. Annuities payable to any retired teacher who has become eligible for retirement because of age as defined in § 38-2021.03 shall be payable during the lifetime of the annuitant. Annuities payable to any teacher retired on

account of disability shall be subject to the conditions set forth under § 38-2021.04.

(b) Any teacher retiring under the provisions of § 38-2021.03 or § 38-2021.04 may, at the time of retirement, elect to receive in lieu of the life annuity described herein 1 of the following:

(1) A reduced annuity and an annuity after death payable to the surviving spouse or domestic partner of such teacher. The life annuity of a teacher making such election, or any portion of such annuity designated by the teacher in writing for such purposes at the time of retirement, shall be reduced by 2½% of so much thereof as does not exceed \$3,600 and by 10% of so much thereof as exceeds \$3,600. The spouse or domestic partner of a teacher making such election shall be entitled to an annuity equal to 55% of such life annuity, or designated portion thereof, except that if a retired teacher who has elected a reduced annuity as provided in this paragraph or in subsection (d) of this section dies and is survived by a spouse or domestic partner whom he or she married or entered into a domestic partnership with after retirement, such spouse or domestic partner is entitled to an annuity in an amount which would have been paid had the teacher been married to, or in a domestic partnership with, the spouse or domestic partner at the time of retirement, but only if: (A) such spouse or domestic partner was married to, or in a domestic partnership with, such individual for at least 2 years immediately preceding the teacher's death, or is the mother or father of issue of such marriage or domestic partnership; and (B) such spouse or domestic partnership elects this annuity instead of any other survivor benefit to which he or she may be entitled under this part or another retirement system for employees of the federal or District government. The annuity of a spouse or domestic partner entitled to an annuity under this paragraph shall begin on the day after the retiree dies. Such annuity and any right thereto shall terminate on the last day of the month before: (A) the spouse or domestic partner dies; or (B) the spouse or domestic partner remarries or enters into a domestic partnership before becoming 60 years of age. In the case of a surviving spouse or domestic partner whose annuity under this paragraph is terminated because of remarriage or entry into a domestic partnership before becoming 60 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, or the day the domestic partnership is terminated in accordance with § 32-702(d), if:

(i) The surviving spouse or domestic partner elects to receive the annuity which was terminated instead of a survivor benefit to which the surviving spouse or domestic partner may be entitled, under this part or another retirement system for employees of the federal or District government, by reason of the remarriage or entry into a domestic partnership; and

(ii) Any lump sum paid on termination of the annuity is repaid to the Custodian of Retirement Funds (as defined in § 1-702(6) for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a).

(2) If unmarried, not in a domestic partnership, and in good health, a reduced annuity payable to him during his life, and an annuity after his death payable to a survivor annuitant having an insurable interest in such teacher,

duly designated in writing and filed with the District of Columbia Retirement Board at the time of retirement, during the life of such survivor annuitant equal to 55% of such reduced annuity. The annuity of the survivor annuitant shall commence on the day after the retired teacher dies, and such annuity and any right thereto shall terminate on the last day of the month before the death of the survivor annuitant. The annuity hereunder payable to the teacher shall be 90% of the life annuity otherwise payable if the survivor annuitant is the same age or older than the annuitant, or is less than 5 years younger than the annuitant; 85% if the survivor annuitant is 5 but less than 10 years younger; 80% if the survivor annuitant is 10 but less than 15 years younger; 75% if the survivor annuitant is 15 but less than 20 years younger; 70% if the survivor annuitant is 20 but less than 25 years younger; and 60% if the survivor annuitant is 25 or more years younger. No such election shall be valid until the retiring teacher shall have satisfactorily passed a physical examination under the direction of the Director of the Department of Human Services of the District of Columbia, as prescribed by the Board of Education. No person shall be eligible to receive an annuity under subsection (b) of § 38-2021.09 based upon the service of the same teacher covering the same period of time.

(3) A reduced annuity of equivalent value providing for a life-insurance benefit payable in a lump sum at the time of the annuitant's death. The face amount of such life insurance may be in any amount which the retiring teacher shall designate at the time of retirement but shall not exceed his contributions accumulated with interest to the date of retirement. Payment of such insurance shall be made in accordance with the provisions of § 38-2021.10. Any annuitant who elects to receive the reduced annuity with fixed life-insurance benefits may reconvert the value of the life insurance to an additional annuity of equivalent value on any anniversary of the retirement date of said annuitant prior to reaching age 70.

(4) In the event an individual designated as a surviving spouse or domestic partner or as a survivor annuitant under this subsection predeceases the teacher designating such individual, the annuity of such teacher shall, effective the day after the death of such individual, be the amount it would have been if no such beneficiary had been named.

(c)(1)(A) The annuity of any person who now or hereafter is receiving or entitled to receive an annuity from the Teachers' Retirement and Annuity Fund shall be increased, effective on October 1, 1955, or on the commencing date of the annuity, whichever is later, in accordance with the following schedule:

If annuity commences between	Annuity not in excess of \$1,500 shall be increased by	Annuity in excess of \$1,500 shall be increased by
August 20, 1920, and June 30, 1955	12 per centum ..	8 per centum
July 1, 1955, and December 31, 1955 . .	10 per centum ..	7 per centum
January 1, 1956, and June 30, 1956	8 per centum ...	6 per centum

If annuity commences between	Annuity not in excess of \$1,500 shall be increased by	Annuity in excess of \$1,500 shall be increased by
July 1, 1956, and December 31, 1956 . .	6 per centum . . .	4 per centum
January 1, 1957, and June 30, 1957	4 per centum . . .	2 per centum
July 1, 1957, and December 31, 1957 . .	2 per centum . . .	1 per centum

(B) Such increase in annuity shall not exceed the sum necessary to increase such annuity, exclusive of annuity purchased by voluntary contributions under this section, to \$4,104. The monthly installment of each annuity so increased shall be fixed at the nearest dollar.

(2) The increases provided by this subsection, when added to the annuities of retired employees, shall not operate to increase the annuities of their survivors, except that the annuity of any such survivor who becomes entitled to annuity shall be increased by the per centum provided in paragraph (1) of this subsection appropriate to the commencing date of such survivors annuity.

(d) A teacher who is unmarried and not in a domestic partnership at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to his spouse or domestic partner and who later marries or enters into a domestic partnership may irrevocably elect, in a signed writing filed with the District of Columbia Retirement Board within one year after he or she marries or enters into a domestic partnership, a reduction in his or her current annuity and an annuity after death payable to his or her surviving spouse or domestic partner as provided in paragraph (1) of subsection (b) of this section. The reduced annuity is effective the first day of the month after such election is received by the District of Columbia Retirement Board. The election voids prospectively any election previously made under paragraph (2) or paragraph (3) of subsection (b) of this section.

(e)(1) Notwithstanding any other provision of this part, other than this subsection, the monthly rate of annuity payable under this section shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. § 401 et seq.].

(2) Notwithstanding any other provisions of this part, other than this subsection, the monthly rate of annuity payable under this section to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. § 401 et seq.], or 3 times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) The provisions of this subsection shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States, or the District of Columbia, an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act [42 U.S.C. § 401 et seq.], a pension, veterans' compensation, or any other periodic

payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. § 401 et seq.].

(4) An annuity payable from the Teachers' Retirement and Annuity Fund to a former teacher, which is based on a separation occurring prior to October 20, 1969, is increased by \$240.

(5) In lieu of any increase based on an increase under paragraph (4) of this subsection, an annuity payable from the Teachers' Retirement and Annuity Fund to the surviving spouse of a teacher or annuitant, which is based on a separation occurring prior to October 20, 1969, shall be increased by \$132.

(6) The monthly rate of an annuity resulting from an increase under paragraph (4) or (5) of this subsection shall be considered as the monthly rate of annuity payable under subsection (a) of this section for purposes of computing the minimum annuity under this subsection.

(Aug. 7, 1946, 60 Stat. 878, ch. 779, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 4; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 23; July 2, 1956, 70 Stat. 487, ch. 497, § 1; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203(a); Dec. 29, 1967, 81 Stat. 748, Pub. L. 90-231, § 1(4); May 22, 1970, 84 Stat. 258, Pub. L. 91-263, § 1(f); Oct. 21, 1972, 86 Stat. 1012, Pub. L. 92-518, title II, § 201(1), (2); Sept. 3, 1974, 88 Stat. 1050, Pub. L. 93-407, title III, § 301; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(1)(c), 255(a); Apr. 9, 1997, D.C. Law 11-218, § 4(c), 43 DCR 6172; Apr. 13, 2005, D.C. Law 15-354, § 55(c), 52 DCR 2638; Sept. 12, 2008, D.C. Law 17-231, § 32(a), 55 DCR 6758.)

Section references. — This section is referred to in §§ 38-2021.03, 38-2021.04, 38-2023.12, 38-2021.06, 38-2021.08, 38-2021.09, and 38-2021.19.

Prior Codifications. — 1981 Ed., § 31-1226.

1973 Ed., § 31-725.

Effect of amendments. — D.C. Law 15-354, in subsec. (b)(2), substituted "District of Columbia Retirement Board" for "Auditor of the District of Columbia"; and, in subsec. (d), substituted "District of Columbia Retirement Board" for "Mayor of the District of Columbia" and "Mayor".

D.C. Law 17-231 substituted "surviving spouse or domestic partner" for "widow or widower" throughout the section; rewrote subsec. (b)(1); in subsec. (b)(2), substituted "unmarried", not in a domestic partnership" for "unmarried"; and, in subsec. (d), substituted "unmarried and not in a domestic partnership," for "unmarried", "spouse or domestic partner" for "spouse", and "marries or enters into a domestic partnership".

Emergency legislation. — For temporary amendment of section, see § 4(c) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amend-

ment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 4(c) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournalment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

Legislative history of Law 11-218. — For legislative history of D.C. Law 11-218, see Historical and Statutory Notes following § 38-2021.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Legislative history of Law 17-231. — Law 17-231, the "Omnibus Domestic Partnership Equality Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

References in text. — "Title II of the Social Security Act," referred to throughout subsection (e), is codified at 42 U.S.C. § 401 et seq.

Editor's notes. — Application of Law 11-

218: Section 7 of D.C. Law 11-218 provided that the act shall apply as of January 28, 1997.

Office of Auditor abolished: The Office of the Auditor of the District of Columbia was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Auditor including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3 of the Board of Commissioners, dated August 28, 1952, and effective September 2, 1952. The function of receiving written designation for survivor annuity, referred to in subsection (b)(2) of this section, was transferred from the Auditor to the Accounting Officer, Finance Office, Department of General Administration by Reorganization Order No. 20, dated November 10, 1952. Reorganization Order No. 20 was superseded by Organization Order No. 121, dated December 12, 1957. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Organization Order No. 121 was revoked and replaced by Organization Order No. 3, dated December 13, 1967. Part IVC of the latter Order established a Finance Office within the newly created Department of General Administration, and prescribed the functions thereof. These functions were subsequently transferred to the Director of the Department of Finance and Revenue by paragraph 4, Commissioner's Order No. 69-96, dated March 7, 1969. Functions pertaining to centralized accounting as set forth in Commissioner's Order No. 69-96 were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated April 5, 1972. Organization Order No. 50, dated December 31, 1974, established the Office of Budget and Management Systems, and transferred to that Office the functions of the Office of Budget and Financial Management. The Office of Budget and Management Systems was replaced by Mayor's Order 79-5, dated January 2, 1979, which Order established the Office of Budget and Revenue Development.

Office of Director of Public Health abolished: Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of

Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established, under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2021.06. Annuity of teachers retired for disability.

The annuity of a teacher retiring under § 38-2021.04 shall be at least: (1) forty per centum of the average salary or; (2) the sum obtained under § 38-2021.05 after increasing his total service by the period elapsing between the date of separation and the date he attains the age of 60 years, whichever is the lesser.

(Aug. 7, 1946, 60 Stat. 878, ch. 779, § 6; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 5; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1.)

Section references. — This section is referred to in § 38-2021.04. 1973 Ed., § 31-726.

Prior Codifications. — 1981 Ed., § 31-1229.

§ 38-2021.07. [Omitted].**§ 38-2021.08. Basis for determining annuity amount.**

(a) The years of service which form the basis for determining the amount of the annuity provided in § 38-2021.05(a) shall be computed from the date of original appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay beginning on May 1, 1952, as does not exceed 6 months in the aggregate in any fiscal year, plus any service credit that may be allowed under the provisions of this section; provided, that deposits equal to 5% of those portions of salary received between July 1, 1949, and May 1, 1952, for which service credit was not earned may be made, and service credit received accordingly. A teacher or former teacher who returns to duty after a period of separation is deemed, for the purpose of this section, to have been on a leave of absence without pay for that part of the period in which he or she was receiving benefits under subchapter I of Chapter 81 of Title 5, United States Code, or any earlier statute on which such subchapter is based. In computing an annuity under § 38-2021.05(a) the total service of a teacher shall include days of unused sick leave credited to him. No deposit may be required for days of unused sick leave included in a teacher's total service under the preceding sentence. Days of unused sick leave shall not be counted in determining a teacher's average salary or his eligibility for an annuity. In computing the length of service of retiring teachers credit may be given, year for year, for: (1) public school service or its equivalent outside the District of Columbia but not to exceed 10 years; (2) continuous temporary service in the public schools of the District of Columbia immediately prior to probationary appointment; (3) service in the government of the District of Columbia or the government of the United States allowable under subchapter III of Chapter 83 of Title 5, United States Code; (4) periods of honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States (but not the National Guard except when ordered to active duty in the service of the United States) prior to the date of the separation upon which title to annuity is based; except that, if a teacher is

awarded retired pay on account of military service, his military service shall not be included unless such retired pay is awarded on account of a service-connected disability: (A) incurred in combat with an enemy of the United States; or (B) caused by an instrumentality of war and incurred in the line of duty during an enlistment or employment as provided in Veterans Regulation No. 1(a), part 1, paragraph 1, or is awarded under title III of Public Law 810, 80th Congress; (5) all educational leaves of absence with part pay authorized by the Board of Education in accordance with §§ 1-612.01 to 1-612.03; and (6) continuous temporary service as an employee of any cafeteria or lunchroom operated in the public school buildings of the District of Columbia during any period prior to the date on which such cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately prior to appointment as a teacher in the public schools of the District of Columbia; provided, however, that portion of the annuity which results from credit for service allowable under clauses (1) and (3) of this subsection shall be reduced by the amount of any annuity which the retired teacher is entitled to receive under any federal, state, or municipal retirement or pension system in respect to such service, except that such portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit which the teacher is required to make under the provisions of this section in order to obtain credit for such service; provided further, that no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States and all educational leaves of absence with part pay authorized by the Board of Education in accordance with §§ 1-612.01 to 1-612.03, shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the Teachers' Retirement and Annuity Fund of the District of Columbia a sum equal to: (1) the accumulated contributions which he would have had credited to his individual account if such service had been rendered on active duty in the public schools of the District of Columbia, said contributions to be based on the average annual salary of the class to which the teacher is appointed; and (2) interest thereon computed in accordance with § 38-2023.14(b); provided further, that all contributions to the retirement fund made by any teacher on education leave with part pay shall be determined in accordance with the provisions of § 38-2021.01, but otherwise no provision of this part shall be interpreted to deprive any teacher employed by the Board of Education of any rights or benefits allowable under §§ 1-612.01 to 1-612.03. If the teacher so elects he may deposit the required sum in the Teachers' Retirement and Annuity Fund in monthly installments, upon making a claim with the District of Columbia Retirement Board. Except as otherwise provided in this subsection, this section shall not be construed to allow any teacher more than one year's credit for all services rendered in any one fiscal year.

(b) A teacher who during the period of any war, or of any national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service, as defined in this section, shall not be considered, for the purposes of this part, as separated from his teaching

position by reason of such military service, unless he shall apply for and receive a lump-sum benefit under this part, except that such teacher shall not be considered as retaining his teaching position beyond 6 months after June 4, 1957, or the expiration of 5 years of such military service, whichever is later.

(c) Nothing in this part shall affect the right of a teacher to retired pay, pension, or compensation in addition to the annuity herein provided.

(d) Notwithstanding the provisions of this section, any teacher who is entitled to purchase service credit under the provisions of § 38-1970(d) shall purchase such credit based on the salary received from the Board of Higher Education during the period of service to be credited.

(Aug. 7, 1946, 60 Stat. 879, ch. 779, § 8; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 7; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 2; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 748, Pub. L. 90-231, § 1(5); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(b); Oct. 21, 1972, 86 Stat. 1013, Pub. L. 92-518, title II, §§ 201(3), 202(a)(1), 203(b); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 253(a)(3); May 10, 1989, D.C. Law 7-231, § 34(a), 36 DCR 492; Apr. 13, 2005, D.C. Law 15-354, § 55(d), 52)

Section references. — This section is referred to in §§ 38-2021.03 and 38-2023.14.

Prior Codifications. — 1981 Ed., § 31-1230.

1973 Ed., § 31-728.

Effect of amendments. — D.C. Law 15-354, in subsec. (b)(2), substituted “District of Columbia Retirement Board” for “Mayor of the District of Columbia, or his designated agent”.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

References in text. — “Veterans Regulation No. 1(a), part 1, paragraph 1,” referred to in subsection (a)(4)(B) of this section, was repealed by the Act of June 17, 1957, 71 Stat. 167, Pub. L. 85-56, title XXII, § 2202(129), (217).

“Title III of Public Law 810, 80th Congress,” referred to in subsection (a)(4)(B) of this section, refers to the Act of June 29, 1948, 62 Stat. 1087, ch. 708, title III, §§ 301 to 313, which

was repealed by the Act of August 10, 1956, 70A Stat. 64, ch. 1041, § 53, and the Act of September 2, 1958, 72 Stat. 1569, Pub. L. 85-861, § 36A.

“Section 31-1132(d),” referred to in subsection (d), was repealed by D.C. Law 4-78, effective March 16, 1982.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2021.09. Deferred annuity; annuity to survivors.

(a) Should any teacher to whom this part applies, after completing 5 years of eligible service and before becoming eligible for retirement, become separated from the service, such teacher may elect to receive a deferred annuity, computed as provided in § 38-2021.05, beginning at the age of 62 years and

terminating on the date of his death; provided, that any teacher who becomes separated from the public schools of the District of Columbia for other than retirement purposes and who does not elect to receive a deferred annuity as provided for in this section shall receive as soon as practicable after separation the refund of deductions, deposits, or redeposits with interest thereon (computed to the date of separation or the end of the 90-day period beginning on November 17, 1979, whichever is earlier), or any voluntary contributions made under the provisions of § 38-2021.01, with interest (computed to the date of separation or the end of the 90-day period beginning on November 17, 1979, whichever is earlier); provided further, that no teacher who shall withdraw the amount of his deductions, deposits, or redeposits under this section shall, after reinstatement, be entitled to credit for previous service unless he shall repay to the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a) the amount so withdrawn by him (including the interest thereon) plus interest computed in accordance with § 38-2023.14(c); and provided further, that the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding 100.

(b)(1) In the event any teacher to whom this part applies shall die subsequent to March 6, 1952, after completing at least 18 months of eligible service and is survived by a spouse or domestic partner, such surviving spouse or domestic partner shall be paid an annuity beginning the day after the teacher dies, equal to 55% of the amount of an annuity computed as provided in subsection (a) of § 38-2021.05 with respect to such teacher, except that in the computation of the annuity under such subsection the annuity of the teacher shall be at least the smaller of: (A) forty per centum of his average salary; or (B) the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age. Such annuity and any right thereto shall terminate on the last day of the month before: (A) the surviving spouse or domestic partner dies; or (B) the surviving spouse or domestic partner remarries or enters a new domestic partnership before becoming 60 years of age. In the case of a surviving spouse or domestic partner whose annuity under this paragraph is terminated because of remarriage or entry into a new domestic partnership before becoming 60 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, or the new domestic partnership is terminated in accordance with § 32-702(d), if:

(i) The surviving spouse or domestic partner elects to receive the annuity which was terminated instead of a survivor benefit to which the surviving spouse or domestic partner may be entitled, under this part or another retirement system for employees of the federal or District government, by reason of the remarriage or new domestic partnership; and

(ii) Any lump sum paid on termination of the annuity is repaid to the Custodian of Retirement Funds (as defined in § 1-702(6)), for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a).

(2) If any teacher to whom this part applies shall die after completing at least 18 months of eligible service or after having retired under the provisions

of § 38-2021.03 or § 38-2021.04 and is survived by a spouse or domestic partner, each surviving child shall be paid an annuity equal to the smallest of: (A) sixty per centum of the teacher's average salary divided by the number of children; (B) \$ 900; or (C) \$ 2,700 divided by the number of children. If such teacher is not survived by a spouse or domestic partner, each surviving child shall be paid an annuity equal to the smallest of: (A) seventy-five per centum of the teacher's average salary divided by the number of children; (B) \$ 1,080; or (C) \$ 3,240 divided by the number of children. The child's annuity shall commence on the first day after the teacher dies. Such annuity and the right thereto terminate on the last day of the month before the child: (i) becomes 18 years of age unless he is then a student as described or incapable of self-support; (ii) becomes capable of self-support after becoming 18 years of age unless he or she is then such a student; (iii) becomes 22 years of age if he or she is then such a student and capable of self-support; (iv) ceases to be such a student after becoming 18 years of age unless he or she is then incapable of self-support; or (v) dies or marries; whichever first occurs. Upon the death of the surviving spouse or domestic partner or termination of the annuity of the child, the annuity of any other child or children shall be recomputed and paid as though such spouse, domestic partner, or child had not survived the teacher.

(3) In the event any teacher to whom this part applies shall die subsequent to March 6, 1952, after completing at least 18 months of eligible service, and is not survived by a spouse, domestic partner, or children, but is survived by dependent parents or a dependent father or a dependent mother, such surviving dependent parents or parent shall be paid an annuity, beginning the first day of the month following the death of the teacher, equal to 55% of the amount of an annuity computed as provided in subsection (a) of § 38-2021.05 with respect to such teacher, except that, in the computation of the annuity under such subsection, the annuity of the teacher shall be at least the smaller of 40% of his average salary, or the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age; provided, that such payments shall be made jointly to surviving dependent parents and payment of such annuity shall continue after the death of either dependent parent; provided further, that all such payments or any right thereto shall cease upon the death of both dependent parents.

(c) As used in this section:

(1) The term "spouse" means a surviving wife or husband of an individual, who either shall have been married to such individual for at least 2 years immediately preceding the individual's death, or is the mother or father of issue by such marriage.

(2) The term "child" means:

(A) An unmarried child under 18 years of age, including:

(i) An adopted child; and:

(ii) A stepchild or recognized natural child who lived with the teacher in a regular parent-child relationship;

(B) Such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) Such unmarried child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. For the purpose of this paragraph and paragraph (2) of subsection (b) of this section, a child whose 22nd birthday occurs before July 1st or after August 31st of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the 1st day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the District of Columbia Retirement Board that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(3) The term “dependent parents” means the natural parents of a teacher who were receiving one half or more of their total income from said teacher immediately preceding the death of said teacher.

(4) The term “dependent father” or “dependent mother” means the natural father or natural mother of a teacher who was receiving one half or more of his or her total income from said teacher immediately preceding the death of said teacher.

(5) Repealed.

(6) Questions of dependency and disability arising under this section shall be determined by the District of Columbia Retirement Board and its decisions with respect to such matters shall be final and conclusive and shall not be subject to review.

(7) The term “domestic partner” shall have the same meaning as provided in § 32-701(3), and who shall have been a domestic partner with such individual for at least 2 years immediately preceding his death.

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 8; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203(b), (c), (d), (e); Sept. 2, 1964, 78 Stat. 886, Pub. L. 88-575, § 202; Dec. 29, 1967, 81 Stat. 748, Pub. L. 90-231, § 1(6); May 22, 1970, 84 Stat. 258, Pub. L. 91-263, § 1(e); Oct. 21, 1972, 86 Stat. 1013, Pub. L. 92-518, title II, § 201(4); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(1)(D), (E), 253 (a)(4); Apr. 13, 2005, D.C. Law 15-354, § 55(e), 52 DCR 2638; Sept. 12, 2008, D.C. Law 17-231, § 32(b), 55 DCR 6758.)

Cross references. — Adjustment of annuities, see § 38-2021.21.

Section references. — This section is referred to in §§ 38-2021.01, 38-2021.04, 38-2021.05, 38-2021.13, 38-2021.21, and 38-2023.14.

Prior Codifications. — 1981 Ed., § 31-1231.

1973 Ed., § 31-729.

Effect of amendments. — D.C. Law 15-

354, in subsec. (c)(2)(C), substituted “District of Columbia Retirement Board” for “Mayor of the District of Columbia”; and, in subsec. (c)(6), substituted “District of Columbia Retirement Board” for “Board of Education”.

D.C. Law 17-231 rewrote subsecs. (b) and (c)(1); repealed subsec. (c)(5); and added subsec. (c)(7).

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 38-2021.05.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2021.10. Payment of beneficiaries.

(a) Under regulations prescribed by the District of Columbia Retirement Board, a present or former teacher may designate a beneficiary or beneficiaries for the purpose of this part.

(b)(1) Lump-sum benefits authorized by subsections (c), (d), and (e) of this section shall be paid in the following order of precedence to the person or persons surviving the teacher and alive at the date title to the payment arises, and the payment bars recovery by any other person:

(A) To the beneficiary or beneficiaries designated by the teacher in a signed and witnessed writing received by the District of Columbia Retirement Board before the teacher's death;

(B) If there is no designated beneficiary, to the spouse or domestic partner of the teacher;

(C) If none of the above, to the child or children of the teacher and descendants of deceased children by representation;

(D) If none of the above, to the parents of the teacher or the survivor of them;

(E) If none of the above, to the duly appointed executor or administrator of the estate of the teacher;

(F) If none of the above, to such other next of kin of the teachers as the District of Columbia Retirement Board determines to be entitled under the laws of the domicile of the teacher at the date of his death.

(2) For the purpose of this subsection, the term "child" includes a natural child and an adopted child, but does not include a stepchild.

(c) If: (1) a teacher dies: (A) without a survivor; or (B) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed; or (2) a former teacher not retired dies, the lump-sum credit shall be paid.

(d) If all annuity rights under this part based on the service of a deceased teacher terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(e) If an annuitant dies, any annuity accrued and unpaid shall be paid.

(f) For purposes of this section, the term "lump-sum credit" means the unrefunded amount consisting of:

(1) Retirement deductions made under this part from the salary of a teacher;

(2) Amounts deposited into the teachers' retirement and annuity fund by a teacher covering earlier service; and

(3) Interest earned prior to the end of the 90-day period beginning on November 17, 1979, on the deductions and deposits made with respect to service which aggregates more than 1 year but excluding interest for the fractional part of a month in the total service.

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 10; Mar. 6, 1952, 66 Stat. 21, ch. 95, § 9; Dec. 29, 1967, 81 Stat. 750, Pub. L. 90-231, § 1(7); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 253(a)(5); Apr. 13, 2005, D.C. Law 15-354, § 55(f), 52 DCR 2638; Sept. 12, 2008, D.C. Law 17-231, § 32(c), 55 DCR 6758.)

Section references. — This section is referred to in §§ 38-2021.01, and 38-2021.

Prior Codifications. — 1981 Ed., § 31-1232.

1973 Ed., § 31-730.

Effect of amendments. — D.C. Law 15-354, in subsecs. (a) and (b)(1)(F), substituted "District of Columbia Retirement Board" for "Mayor of the District of Columbia"; and, in subsec. (b)(1)(A), substituted "District of Columbia Retirement Board before the teacher's death;" for "Mayor of the District of Columbia before his death;"

D.C. Law 17-231, in subsec. (b)(1)(B), substituted "spouse or domestic partner" for "widow or widower".

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 38-2021.05.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)) appropriate changes in terminology were made in this section.

§ 38-2021.11. Consent to deductions.

Every teacher who shall continue in the service of the public schools of the District of Columbia after the passage of this part, as well as every person who hereafter may be appointed to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for herein; and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this part, notwithstanding the provisions of the Act of June 20, 1906 (34 Stat. 316), and of any other law, rule, or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia.

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 11.)

Prior Codifications. — 1981 Ed., § 31-1233. 1973 Ed., § 31-731.

§ 38-2021.12. Discharge of teacher.

Nothing in this part shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law.

(Aug. 7, 1946, 60 Stat. 881, ch. 779, § 12.)

Prior Codifications. — 1981 Ed., § 31-1234. 1973 Ed., § 31-732.

§ 38-2021.13. Definitions.

(a) The term “teacher,” under this part, shall include all teachers employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in the District of Columbia Teachers’ Salary Act of 1945 [repealed], as amended, except the employees of the Department of School Attendance and Work Permits; whenever the pronoun “his” occurs in this part it shall be construed to mean both male and female; and the term “annual salary” shall be construed to mean the total annual income received during the fiscal year for service rendered in the public day schools (not including summer schools) of the District of Columbia, including basic salary, automatic increases, and longevity allowances, provided for in the District of Columbia Teachers’ Salary Act of 1945 [repealed], as amended, and all wartime additional compensation or bonus, and this definition of “annual salary” shall not be construed to affect any deductions which have been made prior to July 1, 1946, from any teacher’s “annual salary” as defined in subchapter I of this chapter.

(b) The term “average salary” shall mean the largest annual rate resulting from averaging, over any period of 3 consecutive years of eligible service, or in the case of a survivor annuity under § 38-2021.09(b) based on service of less than 3 years, over the total eligible service in the public schools of the District of Columbia, a teacher’s rates of annual salary in effect during such period, with each rate weighted by the time it was in effect.

(c) For purposes of this part, the term “eligible service” means service in the public schools of the District of Columbia under a temporary, probationary, or permanent appointment to a position, the rate of compensation of which is prescribed in the salary schedule adopted pursuant to §§ 1-611.11 and 1-617.16.

(d) For the purposes of this part, the term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(e) For the purposes of this part, the term “domestic partnership” shall have the same meaning as provided in § 32-701(4).

(Aug. 7, 1946, 60 Stat. 881, ch. 779, § 13; June 4, 1957, 71 Stat. 48, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 751, Pub. L. 90-231, § 1(8); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(a); Oct. 21, 1972, 86 Stat. 1013, Pub. L.

92-518, title II, § 202(a)(2); May 10, 1989, D.C. Law 7-231, § 34(b), 36 DCR 492; Sept. 12, 2008, D.C. Law 17-231, § 32(d), 55 DCR 6758.)

Section references. — This section is referred to in §§ 1-702, 1-901.02, and 38-2021.05.

Prior Codifications. — 1981 Ed., § 31-1235.

1973 Ed., § 31-733.

Effect of amendments. — D.C. Law 17-231 added subssecs. (d) and (e).

Legislative history of Law 7-231. — For legislative history of D.C. Law 7-231, see His-

torical and Statutory Notes following § 38-2021.08.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 38-2021.05.

References in text. — The “District of Columbia Teachers’ Salary Act of 1945, as amended,” referred to twice in subsection (a) of this section, was repealed by the Act of July 7, 1947, 61 Stat. 260, ch. 208, § 20.

§ 38-2021.14. Records and accounts; report to Congress.

The Mayor of the District of Columbia shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this part. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and adjustments of the plan for the retirement of teachers. Until such time as all amounts in the Teachers’ Retirement and Annuity Fund have been expended or transferred to the District of Columbia Teachers’ Retirement Fund established by § 1-713(a), the Mayor of the District of Columbia shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this part, together with the total number of persons receiving annuities and the amounts paid them.

(Aug. 7, 1946, 60 Stat. 881, ch. 779, § 14; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 146(a)(2).)

Prior Codifications. — 1981 Ed., § 31-1236.

1973 Ed., § 31-734.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2021.15. [Omitted].

§ 38-2021.16. Rules and regulations. [Repealed].

Repealed.

(Aug. 7, 1946, 60 Stat. 881, ch. 779, § 16; Apr. 13, 2005, D.C. Law 15-354, § 55(g), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 31-1237.

1973 Ed., § 31-736.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(240) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 7(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2021.17. Funds not assignable or subject to execution.

Except as provided in the District of Columbia Spouse Equity Act of 1988, none of the money mentioned in this part (including any assets of the District of Columbia Teachers' Retirement Fund established by § 1-713(a)) shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process.

(Aug. 7, 1946, 60 Stat. 882, ch. 779, § 17; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 123(b)(1)(F); Mar. 16, 1989, D.C. Law 7-214, § 5, 36 DCR 513.)

Prior Codifications. — 1981 Ed., § 31-1238.

1973 Ed., § 31-737.

Legislative history of Law 7-214. — Law 7-214 was introduced in Council and assigned Bill No. 7-389, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on

November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-289 and transmitted to both Houses of Congress for its review.

References in text. — The "District of Columbia Spouse Equity Act of 1988" is D.C. Law 7-214.

§ 38-2021.18. Applicability.

The provisions of this part shall apply to all teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, if otherwise eligible; provided, that nothing in this part shall require the reduction of any annuity any teacher on the rolls of the public schools of the District of Columbia for the month of June 1946, would be entitled to receive, under the provisions of subchapter I of this chapter, upon retirement. Subchapter I of this chapter shall not otherwise apply to teachers on the rolls of the public schools of the District of Columbia for the month of June 1946, or thereafter, but such subchapter I of this chapter shall remain in force and effect with respect to teachers retired prior to July 1, 1946, subject to the provisions of § 38-2021.19.

(Aug. 7, 1946, 60 Stat. 882, ch. 779, § 18.)

Prior Codifications. — 1981 Ed., § 31-1239. 1973 Ed., § 31-738.

§ 38-2021.19. Recomputation of annuities.

The annuities of all teachers retired prior to July 1, 1946, shall be recomputed in accordance with the provisions of § 38-2021.05 within 90 days after August 7, 1946, retroactive to July 1, 1946, and no recomputation shall be made which will reduce the annuity received by any retired teacher; provided, that the average annual salary during any 5 consecutive years, specified in § 38-2021.05, upon which the annuity is based shall be within the last 10 years of allowable service in the public schools of the District of Columbia; provided further, that the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind.

(Aug. 7, 1946, 60 Stat. 882, ch. 779, § 19.)

Section references. — This section is referred to in § 38-2021.18. 1973 Ed., § 31-739.

Prior Codifications. — 1981 Ed., § 31-1240.

§ 38-2021.20. [Omitted].

§ 38-2021.21. Adjustment of annuities on basis of price index; computation; definitions.

(a) Effective December 1, 1965, each annuity payable from the fund which has a commencing date not later than January 1, 1966, shall be increased by: (1) the per centum rise in the price index, adjusted to the nearest $\frac{1}{10}$ of 1%, determined by the Mayor of the District of Columbia on the basis of the annual average price index for calendar year 1962 and the price index for the month of July 1965; plus (2) $6\frac{1}{2}\%$ if the commencing date (or in the case of a survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred on or before October 1, 1956, or $1\frac{1}{2}\%$ if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after October 1, 1956. The month used in determining the increase based on the per centum rise in the price index under this subsection shall be the base month for determining the per centum change in the price index until the next succeeding increase occurs.

(b)(1) For the payments of benefits accrued by teachers after June 30, 1997, on January 1 of each year (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index for the preceding year by determining the difference between the index published for December of the preceding year and the index published for December of the second preceding year.

(2)(A) If, in accordance with paragraph (1) of this subsection, the Mayor determines in a year (beginning with 1999) that the per centum change in the price index for the preceding year indicates a rise in the price index, each

annuity having a commencing date on or before March 1 of the year shall, effective March 1 of the year, be increased by an amount equal to:

(i) In the case of an annuity having a commencing date on or before March 1 of such preceding year, the per centum change computed under paragraph (1) of this subsection, adjusted to the nearest $\frac{1}{10}$ of 1 per centum; or

(ii) In the case of an annuity having a commencing date after March 1 of such preceding year, a pro rata increase equal to the product of $\frac{1}{12}$ of the per centum change computed under paragraph (1) of this subsection, multiplied by the number of months (not to exceed 12 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest $\frac{1}{10}$ of 1 per centum.

(B) On January 1, 1998, or within a reasonable time thereafter, the Mayor shall determine the per centum change in the price index published for December 1997 over the price index published for June 1997. If such per centum change indicates a rise in the price index, effective March 1, 1998:

(i) Each annuity having a commencing date on or before September 1, 1997, shall be increased by an amount equal to such per centum change, adjusted to the nearest $\frac{1}{10}$ of 1 per centum; and

(ii) Each annuity having a commencing date after September 1, 1997, and on or before March 1, 1998, shall be increased by a pro rata increase equal to the product of $\frac{1}{6}$ of such per centum change, multiplied by the number of months (not to exceed 6 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest $\frac{1}{10}$ of 1 per centum.

(b-1)(1) On January 1 of each year, or within a reasonable time thereafter, the Mayor shall determine the per centum change in the price index for the preceding year and by determining the difference between the index published for December of the preceding year and the index published for December of the second preceding year.

(2)(A) If, in accordance with paragraph (1) of this subsection, the Mayor determines in a year, beginning with 1997, that the per centum change in the price index for the preceding year indicates a rise in the price index, each annuity having a commencing date on or before March 1 of the year shall, effective March 1 of the year, be increased by an amount equal to:

(i) In the case of an annuity having a commencing date on or before March 1 of the preceding year, the per centum change computed under paragraph (1) of this subsection, adjusted to the nearest $\frac{1}{10}$ of 1%; or

(ii) In the case of an annuity having a commencing date after March 1 of the preceding year, a pro rata increase equal to the product of $\frac{1}{12}$ of the per centum change computed under paragraph (1) of this subsection, multiplied by the number of months (not to exceed 12 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest $\frac{1}{10}$ of 1%.

(B) On January 1, 1996, or within a reasonable time thereafter, the Mayor shall determine the per centum change in the price index published for December 1995 or the price index published for June 1995. If such per centum change indicates a rise in the index, effective March 1, 1996;

(i) Each annuity having a commencing date on or before September 1, 1995, shall be increased by an amount equal to the per centum change, adjusted to the nearest $\frac{1}{10}$ of 1%; and

(ii) Each annuity having a commencing date after September 1, 1995, and on or before March 1, 1996, shall be increased by a pro rata increase equal to the product of $\frac{1}{2}$ of the per centum change, multiplied by the number of months (not to exceed 6 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest $\frac{1}{10}$ of 1%.

(3) This subsection shall apply only to public school teachers hired after December 31, 1979.

(c) Eligibility for an annuity increase under this section shall be as provided in subsection (b)(2) of this section, except as follows:

(1) Effective from its commencing date, an annuity payable to an annuitant's survivor (other than a child entitled under § 38-2021.09(b)(2)), which annuity commences the day after the annuitant's death and after the effective date of the 1st increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death;

(2) For the purpose of computing the annuity of a child under § 38-2021.09(b)(2) that commences after October 31, 1969, the items \$900, \$1,080, \$2,700, and \$3,240 appearing in § 38-2021.09(b)(2) shall be increased by the total per centum increases allowed and in force under this section on or after such day and, in case of a deceased annuitant, the items 60% and 75% appearing in § 38-2021.09(b)(2) shall be increased by the total per centum allowed and in force to the annuitant under this section on or after such day.

(3) Each annuity increase payable from the fund to an annuitant hired on or after the first day of the first pay period which begins after October 29, 1996, or to such annuitant's beneficiary or survivor, shall in no event exceed 3% per annum.

(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except that such installments shall after adjustment reflect an increase of at least \$1.

(f) For purposes of this section, the term "price index" shall mean the Consumer Price Index (all items — United States city average) published monthly by the Bureau of Labor Statistics. The term "base month" shall mean the month for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase.

(Aug. 7, 1946, ch. 779, § 21, as added Oct. 24, 1962, 76 Stat. 1236, Pub. L. 87-881, title II, § 202; July 5, 1966, 80 Stat. 266, Pub. L. 89-494, § 1; Dec. 29, 1967, 81 Stat. 751, Pub. L. 90-231, § 1(9); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(c); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 251(a)(1), (b); Sept. 26, 1995, D.C. Law 11-52, § 806b, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-218, § 4(d), 43 DCR 6172; Apr. 9, 1997, D.C. Law 11-255, § 33, 44 DCR 1271; Aug. 5, 1997, 111 Stat. 719, Pub. L. 105-33, § 11013(b); Sept. 18, 1998, D.C. Law 12-152, § 207(b), 45 DCR 4045.)

Section references. — This section is referred to in § 38-2023.13.

Prior Codifications. — 1981 Ed., § 31-1241.

1973 Ed., § 31-739a.

Temporary Amendment of Section. — Section 206(b) of D.C. Law 12-58 rewrote (b).

Section 209(b) of D.C. Law 12-58 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 4(d) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 4(d) of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

For temporary amendment of section, see § 206(b) of the Police Officer, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Emergency Act of 1997 (D.C. Act 12-155, October 1, 1997, 44 DCR 5896), and see § 206(b) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Congressional Review Emergency Act of 1997 (D.C. Act 12-240, January 13, 1998, 45 DCR 531).

Legislative history of Law 10-135. — For legislative history of D.C. Law 10-135, see Historical and Statutory Notes following § 38-2021.01.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-218. — For legislative history of D.C. Law 11-218, see Historical and Statutory Notes following § 38-2021.01.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-58. — Law 12-58, the “Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Temporary Act of 1997,” was introduced in

Council and assigned Bill No. 12-383. The Bill was adopted on first and second readings on September 24, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 22, 1997, it was assigned Act No. 12-189 and transmitted to both Houses of Congress for its review. D.C. Law 12-58 became effective on March 20, 1998.

Legislative history of Law 12-152. — Law 12-152, the “Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998,” was introduced in Council and assigned Bill No. 12-386, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-369 and transmitted to both Houses of Congress for its review. D.C. Law 12-152 became effective on September 18, 1998.

Editor's notes. — Full Funding of Pension Liability Reform Amendment Act of 1994: Section 312 of D.C. Law 10-135 amends (b)(1) and (2) to read as follows:

“(b)(1) On January 1 of each year (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index for the preceding year by determining the difference between the index published for December of the preceding year and the index published for December of the second preceding year.

“(2)(A) If (in accordance with paragraph (1) of this subsection) the Mayor determines in a year (beginning with 1997) that the per centum change in the price index for the preceding year indicates a rise in the price index, each annuity having a commencing date on or before March 1 of the year shall, effective March 1 of the year, be increased by an amount equal to—

“(i) In the case of an annuity having a commencing date on or before March 1 of such preceding year, the per centum change computed under paragraph (1), adjusted to the nearest $\frac{1}{10}$ of 1%; or.

“(ii) In the case of an annuity having a commencing date after March 1 of such preceding year, a pro rata increase equal to the product of:

“(I) One-twelfth of the per centum change computed under paragraph (1), multiplied by.

“(II) The number of months (not to exceed 12 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest $\frac{1}{10}$ of 1%.

“(B) On January 1, 1996 (or within a reasonable time thereafter), the Mayor shall determine the per centum change in the price index published for December 1995 over the price index published for June 1995. If such per centum change indicates a rise in the price index, effective March 1, 1996—

“(i) Each annuity having a commencing date on before September 1, 1995, shall be increased by an amount equal to such per centum change, adjusted to the nearest $\frac{1}{10}$ of 1%; and.

“(ii) Each annuity having a commencing date after September 1, 1995, and on or before March 1, 1996, shall be increased by a pro rata increase equal to the product of.

“(I) One-sixth of such per centum change, multiplied by.

“(II) The number of months (not to exceed 6 months, counting any portion of a month as an entire month) for which the annuity was payable before the effective date of the increase, adjusted to the nearest $\frac{1}{10}$ of 1%.”

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2021.22. [Omitted].

§ 38-2021.23. Increased annuities for certain surviving spouses or domestic partners.

Effective on November 1, 1969, or the commencing date of the annuity, whichever is later, the annuity of each surviving spouse or domestic partner whose entitlement to annuity payable from the District of Columbia Teachers' Retirement and Annuity Fund resulted from the death of: (1) a teacher prior to October 24, 1962; or (2) a retired teacher whose retirement was based on a separation from service prior to October 24, 1962; shall be increased by 20%.

(Aug. 7, 1946, ch. 779, § 23, as added May 22, 1970, 84 Stat. 258, Pub. L. 91-263, § 1(g); Sept. 12, 2008, D.C. Law 17-231, § 32(e), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 31-1242.

1973 Ed., § 31-739d.

Effect of amendments. — D.C. Law 17-231, in subsec. (b)(1)(B), substituted “spouse or domestic partner” for “spouse”.

Emergency legislation. — For temporary

(90 day) addition of §§ 38-2021.24 and 38-2021.25, see §§ 3602 to 3604 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 17-231. — For Law 17-231, see notes following § 38-2021.05.

§ 38-2021.24. Rollovers; purchase of service credit.

(a) Any individual withdrawing any distribution under this part, which distribution constitutes an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 135; 26 U.S.C. § 402(c)), (“Internal Revenue Code of 1986”), may elect, at the time and in the manner prescribed by the District of Columbia Retirement Board, and after receipt of proper notice, to have any portion of the distribution paid directly to an eligible retirement plan, within the meaning of section 402(c) of the Internal Revenue Code of 1986, in a direct rollover.

(b) The Custodian of the Retirement Funds shall be entrusted with any transfer from another retirement plan for the purchase of service credit,

including transfers allowed by sections 403(b) and 457 of the Internal Revenue Code of 1986. Before any transfer is received, the District of Columbia Retirement Board shall be presented with documentation sufficient to satisfy the provisions of the Internal Revenue Code of 1986 governing the substantiation of proposed transfers for the purchase of service credit.

(c)(1) The Custodian of the Retirement Funds shall also be entrusted with any rollover contribution from:

(A) A qualified plan described in section 401(a) or 403(b) of the Internal Revenue Code of 1986, excluding after-tax employee contributions;

(B) An annuity contract described in section 403(b) of the Internal Revenue Code of 1986, excluding after-tax employee contributions;

(C) An eligible plan under section 457(b) of the Internal Revenue Code of 1986 which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or

(D) Amounts transferred from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code of 1986 that is eligible to be rolled over and would otherwise be includible in gross income.

(2) The rollover shall be separately accounted for as member contributions that were not previously taxed. Before any rollover is received, the District of Columbia Retirement Board shall be presented with documentation sufficient to satisfy the provisions of the Internal Revenue Code of 1986 governing the substantiation of proposed rollover contributions. The rollover shall be used to purchase service credit in addition to the service credit provided under the provisions of this act.

(d) The District of Columbia Retirement Board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan pursuant to the Internal Revenue Code of 1986. If a conflict should arise with a qualification requirement, the provision shall be interpreted in favor of maintaining the federal qualification requirements. The District of Columbia Retirement Board may adopt rules to implement this section.

(Aug. 7, 1946, ch. 799, § 24, as added Oct. 1, 2002, D.C. Law 14-190, § 3702, 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 71, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 55(h), 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

D.C. Law 15-354 substituted “District of Columbia Retirement Board” for “Mayor”.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 38-302.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Short title. — Short title of subtitle A of title XXXVII of Law 14-190: Section 3701 of D.C. Law 14-190 provided that subtitle A of title XXXVII of the act may be cited as the Teachers

Retirement Consolidation Amendment Act of 2002.

References in text. — Section 403(b) of the Internal Revenue Code of 1986, referred to in subsecs. (b) and (c), is codified as 26 U.S.C. § 403(b).

Section 457 of the Internal Revenue Code of 1986, referred to in subsecs. (b) and (c)(1)(C), is codified as 26 U.S.C. § 457.

Section 401(a) of the Internal Revenue Code of 1986, referred to in subsec. (c)(1)(A), is codified as 26 U.S.C. § 401(a).

Section 403(b) of the Internal Revenue Code of 1986, referred to in subsec. (c)(1)(B), is codified as 26 U.S.C. § 403(b).

Section 408(a) or 408(b) of the Internal Revenue Code of 1986, referred to in subsec. (c)(1)(D), is codified as 26 U.S.C. § 408(a) or 408(b).

Editor's notes. — Section 3703 of D.C. Law 14-190 provided: "This subtitle subtitle A of title XXXVII, §§ 3701 to 3705 of D.C. Law 14-190 is adopted in good faith to comply with the requirements of the Economic Growth and

Tax Relief Reconciliation Act of 2001, approved June 7, 2001 (115 Stat. 38; scattered sections of Title 26 of the U.S. Code) ("EGTRRA") and shall be construed in accordance with EGTRRA and guidance issued thereunder."

Section 3704 of D.C. Law 14-190 provided: "This subtitle subtitle A of title XXXVII, §§ 3701 to 3705 of D.C. Law 14-190 shall apply as of January 1, 2002."

§ 38-2021.25. Internal Revenue Code limits.

(a)(1) Benefits and contributions under the provisions of this part shall not be computed with reference to any compensation that exceeds that maximum dollar amount permitted by section 401(a)(17) [26 U.S.C. § 401] of the Internal Revenue Code of 1986, as adjusted for increases in the cost-of-living.

(2) This subsection shall apply as of October 1, 2002, and shall apply only with respect to an individual who first becomes covered by this part after October 1, 2002.

(b) Benefits shall not be payable under this part to the extent that they exceed the limitations imposed by section 415 of the Internal Revenue Code of 1986, as adjusted for increases in the cost-of-living.

(Aug. 7, 1946, ch. 799, § 25, as added Oct. 1, 2002, D.C. Law 14-190, § 3702, 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 71, 51 DCR 881.)

Effect of amendments. — D.C. Law 15-105 validated a previously made technical correction.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 38-302.

References in text. — Section 401(a)(17) of the Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified to 26 U.S.C. § 401(a)(17).

Section 415 of the Internal Revenue Code of 1986, referred to in subsec. (b), is classified as 26 U.S.C. § 415.

Editor's notes. — Section 3703 of D.C. Law 14-190 provided: "This subtitle subtitle A of title XXXVII, §§ 3701 to 3705, of D.C. Law 14-190 is adopted in good faith to comply with the requirements of the Economic Growth and Tax Relief Reconciliation Act of 2001, approved June 7, 2001 (115 Stat. 38; scattered sections of Title 26 of the U.S. Code) ("EGTRRA") and shall be construed in accordance with EGTRRA and guidance issued thereunder."

Section 3704 of D.C. Law 14-190 provided: "This subtitle subtitle A of title XXXVII, §§ 3701 to 3705, of D.C. Law 14-190 shall apply as of January 1, 2002."

PART B.

ADDITIONAL ANNUITY PROVISIONS.

Subpart I—Increased Annuities.

§ 38-2023.01. Annuity increase.

(a) The annuity of each retired employee, who on August 1, 1958, is receiving or is entitled to receive an annuity from the District of Columbia Teachers' Retirement and Annuity Fund based on service which terminated prior to October 1, 1956, shall be increased by 10%, but no such increase shall exceed \$500 per annum.

(b) The annuity otherwise payable from the District of Columbia Teachers' Retirement and Annuity Fund to: (1) each survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated prior to October 1, 1956; and (2) each survivor of a retired employee described in subsection (a) of this section shall be increased by 10%. No increase provided by this subsection shall exceed \$250 per annum.

(c) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 1.)

Section references. — This section is referred to in §§ 38-2023.03 and 38-2023.04. 1973 Ed., § 31-741.

Prior Codifications. — 1981 Ed., § 31-1247.

§ 38-2023.02. Annuity for unremarried widow or widower.

The unremarried widow or widower of an employee: (1) Who had completed at least 10 years of service creditable for retirement purposes under part A of this subchapter; (2) who died before May 1, 1952; and (3) who was at the time of his death: (A) subject to an act under which annuities granted before May 1, 1952, were or are now payable from the District of Columbia Teachers' Retirement and Annuity Fund; or (B) retired under such act; shall be entitled to receive an annuity. In order to qualify for such annuity, the widow or widower shall have been married to the employee for at least 5 years immediately prior to his death and must be not entitled to any other annuity from the District of Columbia Teachers' Retirement and Annuity Fund based on the service of such employee. Such annuity shall be equal to one half of the annuity which the employee was receiving on the date of his death if retired, or would have been receiving if he had been retired for disability on the date of his death, but shall not exceed \$750 per annum and shall not be increased by the provisions of this or any other prior law. Any annuity granted under this section shall cease upon the death or remarriage of the widow or widower.

(Sept. 2, 1958, 72 Stat. 1768, Pub. L. 85-917, § 2.)

Section references. — This section is referred to in §§ 38-2023.03 and 38-2023.04. 1973 Ed., § 31-742.

Prior Codifications. — 1981 Ed., § 31-1248.

§ 38-2023.03. Effective dates of annuities provided by §§ 38-2023.01 and 38-2023.02; computation.

(a) An increase in annuity provided by subsection (a), or clause (1) of subsection (b), of § 38-2023.01 shall take effect on August 1, 1958. An increase in annuity provided by clause (2) of such subsection (b) shall take effect on the commencing date of the survivor annuity.

(b) An annuity provided by § 38-2023.02 shall commence on August 1, 1958, or on the 1st day of the month in which application for such annuity is received

by the Mayor of the District of Columbia or his designated agent, or, after October 1, 2004, the 1st day of the month in which application for such annuity is received by the District of Columbia Retirement Board, whichever occurs later.

(c) The monthly installment of each annuity increased or provided by §§ 38-2023.01 to 38-2023.04 shall be fixed at the nearest dollar.

(Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 3; Apr. 13, 2005, D.C. Law 15-354, § 56, 52 DCR 2638.)

Section references. — This section is referred to in § 38-2023.04.

Prior Codifications. — 1981 Ed., § 31-1249.

1973 Ed., § 31-743.

Effect of amendments. — D.C. Law 15-354, in subsec. (b), inserted “or, after October 1, 2004, the 1st day of the month in which application for such annuity is received by the District of Columbia Retirement Board,” following “agent.”

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2023.04. Payment of annuity increase.

The annuities and increases in annuities provided by §§ 38-2023.01 to 38-2023.03 shall be paid from the District of Columbia Teachers' Retirement and Annuity Fund until such time as all amounts in such fund have been expended or transferred under § 1-713(b) to the District of Columbia Teachers' Retirement Fund established by § 1-713(a) and thereafter from the District of Columbia Teachers' Retirement Fund. Such annuities and increases in annuities shall terminate for each fiscal year beginning on or after July 1, 1960, for which the Congress has failed to make provision for the payment of like annuities and increases in annuities under the Act approved June 25, 1958 (72 Stat. 218), for such fiscal year. For any fiscal year for which such annuities and increases in annuities shall terminate for the reason set forth in this section, §§ 38-2023.01 to 38-2023.03 shall not be in effect and annuities and increases in annuities shall be determined and paid as though such sections had not been enacted. Nothing contained in this section shall be held or considered to prevent the payment of annuities and increases in annuities provided by §§ 38-2023.01 to 38-2023.03 for any fiscal year for which the Congress shall have made provisions for the payment of like annuities and increases in annuities under such Act approved June 25, 1958 (72 Stat. 218).

(Sept. 2, 1958, 72 Stat. 1769, Pub. L. 85-917, § 4; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 123(b)(2).)

Section references. — This section is referred to in § 38-2023.03. 1973 Ed., § 31-744.

Prior Codifications. — 1981 Ed., § 31-1250.

Subpart II—General.

§ 38-2023.11. Recomputation of benefits.

The annuities of all teachers retired prior to the effective date of this act shall be recomputed in accordance with the provisions of § 38-2021.04 within 90 days after March 6, 1952, retroactive to the effective date of this act, and no recomputation shall be made which will reduce the annuity received by any retired teacher; provided, that the average annual salary during any 5 consecutive years, specified in § 38-2021.04, upon which the annuity is based shall be within the last 10 years of allowable service in the public schools of the District of Columbia; provided further, that the increased amount of the annuity resulting therefrom shall be a straight life annuity without any insurance or death benefits of any kind.

(Mar. 6, 1952, 66 Stat. 22, ch. 95, § 10.)

Prior Codifications. — 1981 Ed., § 31-1227. this act,” referred to twice in this section, is prescribed by § 11 of the Act of March 6, 1952, 66 Stat. 22, ch. 95.

1973 Ed., § 31-725a.

References in text. — “The effective date of

§ 38-2023.12. Annuity increase.

(a) The annuity of each person who, January 1, 1963, is receiving or entitled to receive an annuity from the District of Columbia Teachers’ Retirement and Annuity Fund shall be increased by 5% of the amount of such annuity.

(b) The annuity of each person who receives or is entitled to receive an annuity from the District of Columbia Teachers’ Retirement and Annuity Fund commencing during the period which begins on the day following January 1, 1963 and ends 5 years after such date, shall be increased in accordance with the following table:

If the annuity commences between	The annuity shall be increased by
January 2, 1963, and December 31, 1963	4 per centum.
January 1, 1964, and December 31, 1964	3 per centum.
January 1, 1965, and December 31, 1965	2 per centum.
January 1, 1966, and December 31, 1966	1 per centum.

(c) In lieu of any other increase provided by this section, the annuity of a survivor of a retired employee who received an increase under this section shall be increased by a percentage equal to the percentage by which the annuity of such employee was so increased.

(d) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

(e) The limitation contained in the next to the last sentence of § 38-2021.05(c) (1) shall not be effective on and after January 1, 1963.

(f) The increases provided by this section shall take effect on January 1, 1963, except that any increase under subsection (b) or (c) of this section shall take effect on the beginning date of the annuity.

(g) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar.

(Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87-881, title II, § 201.)

Prior Codifications. — 1981 Ed., § 31-1228. 1973 Ed., § 31-725b.

§ 38-2023.13. Application of amendment to § 38-2021.21.

The amendment made by Pub. L. 96-122, § 251(a)(1), to § 38-2021.21(b) shall apply to any increase after the effective date of such amendment in annuities payable from the District of Columbia Teachers' Retirement and Annuity Fund established by § 38-2021.02 or from the District of Columbia Teachers' Retirement Fund established by § 1-713(a), except that with respect to the first date after the effective date of such amendment on which the Mayor is to determine a per centum change, such per centum change shall be determined by computing the change in the price index published for the month immediately preceding such 1st date over the price index published for the last month before such effective date for which the price index showed a per centum rise forming the basis for a cost-of-living annuity increase under § 38-2021.21(b), as in effect immediately before the amendment of such section by Pub. L. 96-122, § 251(a)(1).

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 251(a)(2).)

Prior Codifications. — 1981 Ed., § 31-1243. 1973 Ed., § 31-739.1.

§ 38-2023.14. Computation of interest.

(a) For purposes of determining the amount available to purchase an annuity under subsection (b) of § 38-2021.01, interest shall be deemed to accrue on deposits at the following rates for the following periods:

(1) Prior to the end of the 90-day period beginning on November 17, 1979, interest shall accrue at the rate of 3% per annum compounded as of December 31st of each year;

(2) For the period beginning at the end of the 90-day period beginning on November 17, 1979, and ending on September 30, 1981, interest shall accrue at a rate which (as determined by the District of Columbia Retirement Board) is equal to the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest ⅓ of 1%);

(3) After October 1, 1981, interest shall accrue at an annual rate which (as determined by the District of Columbia Retirement Board) is equal to the average annual rate of return on investment (adjusted to the nearest ⅓ of 1%) for the District of Columbia Teachers' Retirement Fund established by § 1-713.

(b) Interest required on deposits under § 38-2021.01a(b) or § 38-2021.08, or under § 38-2061.02, shall be computed as follows:

(1) Interest shall be paid at a rate which (as determined by the District of Columbia Retirement Board) is equal to the average rate of return on investment (adjusted to the nearest $\frac{1}{8}$ of 1%) for the District of Columbia Teachers' Retirement Fund (established by § 1-713) for the period beginning on the 1st day of the 1st month which begins after the midpoint of the period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the 1st payment if he makes installment deposits, except that:

(A) For so much of any such period which occurs between the end of the 90-day period beginning on November 17, 1979, and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest $\frac{1}{8}$ of 1%) shall be used in determining the interest rate to be paid on deposits; and

(B) For so much of any such period which occurs prior to the end of the 90-day period beginning on November 17, 1979, the rate of 3% a year, compounded annually, shall be used in determining the interest rate to be paid on deposits;

(2) Interest shall be payable for the period beginning on the first day of the first month which begins after the midpoint of the period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made;

(3) If a teacher elects to make his deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited.

(c) Interest required on deposits under § 38-2021.09(a) shall be computed as follows:

(1) Interest shall be paid at a rate which (as determined by the District of Columbia Retirement Board) is equal to the average rate of return on investment (adjusted to the nearest $\frac{1}{8}$ of 1%) for the District of Columbia Teachers' Retirement Fund (established by § 1-713) for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the 1st payment if he makes installment deposits, except that:

(A) For so much of any such period which occurs between the end of the 90-day period beginning on November 17, 1979, and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest $\frac{1}{8}$ of 1%) shall be used in determining the interest rate to be paid on deposits; and

(B) For so much of any such period which occurs prior to the end of the 90-day period beginning on November 17, 1979, the rate of 3% a year, compounded annually, shall be used in determining the interest rate to be paid on deposits;

(2) Interest shall be payable for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made; and

(3) If a teacher elects to make his deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited.

(Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 253(a)(6); Apr. 13, 2005, D.C. Law 15-354, § 3(f), 52 DCR 2638.)

Section references. — This section is referred to in §§ 38-2021.01, 38-2021.01a, 38-2021.03, 38-2021.08, 38-2021.09, and 38-2061.02.

Prior Codifications. — 1981 Ed., § 31-1244.

1973 Ed., § 31-739e.

Effect of amendments. — D.C. Law 15-354 substituted “District of Columbia Retirement Board” for “Mayor of the District of Columbia”.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

§ 38-2023.15. Waiver of annuity; revocation.

Any person entitled to annuity pursuant to the provisions of subchapter I of this chapter or part A of this subchapter may decline to accept all or any part of such annuity by a waiver signed and filed with the District of Columbia Retirement Board. Such waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect.

(July 2, 1956, 70 Stat. 487, ch. 497, § 2; Apr. 13, 2005, D.C. Law 15-354, § 57, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 31-1246.

1973 Ed., § 31-740.

Effect of amendments. — D.C. Law 15-354 substituted “District of Columbia Retirement Board” for “Mayor of the District of Columbia or his designated agent”.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2023.16. Tax-sheltered annuity program.

(a) Notwithstanding the provisions of §§ 1-611.11 and 1-617.16, and of any other law or regulation affecting the salary of teachers or school officers employed in the service of the public schools of the District of Columbia, the Mayor of the District of Columbia (hereinafter referred to as the “Mayor”) is authorized to enter into an agreement with a teacher or school officer to reduce the salary of that teacher or school officer by an amount requested by that

teacher or school officer, and to contribute that amount for the purchase of an annuity contract described in § 403(b) of the Internal Revenue Code of 1986 (relating to the taxability of beneficiaries of annuity plans) for that teacher or school official.

(b) The reduction in salary effected under an agreement authorized by this section shall not be considered in computing the salary for any teacher or school officer for any other purpose including, but not limited to, the determination of benefits or contributions under Chapters 81 (relating to workmen's compensation) and 87 (relating to life insurance) of Title 5 of the United States Code.

(c) The Mayor shall prescribe such regulations as he deems necessary to carry out the purposes of this section.

(d) For the purposes of this section, the term "teacher or school officer" includes all teachers, school officers, and other employees of the Board of Education of the District of Columbia who receive compensation according to the salary schedules under §§ 1-611.11 and 1-617.16, and to whom the provisions of part A of this subchapter are applicable.

(e) This section shall apply with respect to any pay period of any teacher or school officer beginning on or after the 180th day after April 26, 1972.

(Apr. 26, 1972, 86 Stat. 131, Pub. L. 92-281, §§ 1 to 4; May 10, 1989, D.C. Law 7-231, § 35, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 31-1252.

1973 Ed. § 31-746.

Legislative history of Law 7-231. — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 38-2021.08.

References in text. — "§ 403(b) of the Internal Revenue Code of 1986," referred to in subsection (a) of this section, is codified as 26 U.S.C. § 403(b).

Change in Government. — This section originated at a time when local government powers were delegated to the District of Colum-

bia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter III. Retirement Incentive Program.

§ 38-2041.01. Retirement Incentive Program.

(a) The Board of Education is authorized to establish a retirement incentive program ("program") which shall apply to eligible employees under the personnel authority of the Board of Education. This authorization is conditioned on the requirement that no District employee who receives an incentive payment under the early out retirement program shall be reemployed with the District government, including the Board of Education, for 5 years, or hired or retained as a sole source personal services contractor for 5 years from the date of retirement.

(b) The Board of Education may exclude or limit positions from the program based on the needs of the Board.

(c) The program shall be effective from December 21, 1994, through September 30, 1995.

(d) The program shall be limited to employees retiring under the early out retirement provisions of 5 U.S.C. 8336(d)(2), employees who become eligible to retire on or before June 15, 1995, under the optional retirement provisions of 5 U.S.C. 8336(a), (b), or (f), and teachers who are eligible to retire under § 38-2021.01(f).

(e) The program shall offer a retirement incentive of 50% of an employee's annual rate of basic pay paid from the employee's salary or pay schedule which was in effect on the employee's date of retirement, not to exceed \$24,000, to be paid in 24 equal installments.

(f) Retirement incentive payments shall be prorated in the case of a part-time employee.

(g) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

(h) No incentive payments shall be paid to:

(1) An employee retiring under the law enforcement provisions of 5 U.S.C. § 8336(c), the discontinued service/involuntary retirement provisions of 5 U.S.C. § 8336(d) (1), or the disability retirement provisions of 5 U.S.C. § 8337; or

(2) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8334.

(Sept. 26, 1995, D.C. Law 11-52, § 901, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 31-1271.

Temporary Amendment of Section. — Section 2 of D.C. Law 15-184, in subsec. (a), substituted "the personnel authority of the Board of Education, who are enrolled in retirement systems established pursuant to An Act For the retirement of public-school teachers in the District of Columbia, approved August 7, 1946 (60 Stat. 875; D.C. Official Code §§ 38-2021.01—38-2021.23), commonly known as the "District of Columbia Teachers' Retirement System." for "the personnel authority of the Board of Education."; repealed subsec. (c); and rewrote subsecs. (d) and (e) to read as follows:

"(d) The program shall be limited to employees who are eligible to voluntarily retire on or before May 14, 2004, pursuant to section 3 of An Act For the retirement of public-school teachers in the District of Columbia, approved August 7, 1946 (60 Stat. 875; D.C. Official Code § 38-2021.03), and who declare their intent to retire between April 1, 2004 and May 14, 2004, with an effective retirement date between June 25, 2004 and June 30, 2004."

"(e) The program shall offer a retirement incentive of an amount to be determined by the

Board, not to exceed \$23,250, to be paid in one installment."

Section 4(b) of D.C. Law 15-184 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary establishment of a District of Columbia Teachers' Defined Benefit Pension Program, see title II, §§ 101-509 of the Police Officers', Firefighters' and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 43 DCR 4637).

For temporary amendment of section, see title III, § 104 of the Police Officers', Firefighters' and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 43 DCR 4637).

Section 5 of D.C. Law 11-218 repealed D.C. Act 11-369.

For temporary repeal of the Police Officers', Fire Fighters', and Teachers' Defined Benefit Pension Program Emergency Establishment Act of 1996 (D.C. Act 11-369, August 21, 1996, 41 DCR 4637), see § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension

Modification Emergency Amendment Act of 1996 (D.C. Act 11-428, October 29, 1996, 43 DCR 6147), and § 5 of the New Hires Police Officers, Fire Fighters, and Teachers Pension Modification Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-10, March 3, 1997, 44 DCR 1633).

For temporary (90 day) amendment of section, see § 2 of Teacher Retirement Incentive Program Emergency Act of 2004 (D.C. Act 15-422, May 10, 2004, 51 DCR 5179).

For temporary (90 day) amendment of section, see § 2 of Teacher Retirement Incentive Program Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-517, August 2, 2004, 51 DCR 8990).

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995,

and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-218. — For legislative history of D.C. Law 11-218, see Historical and Statutory Notes following § 38-2021.01.

Legislative history of Law 15-184. — Law 15-184, the “Teacher Retirement Incentive Program Temporary Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-793, and was retained by Council. The Bill was adopted on first and second readings on April 20, 2004, and May 4, 2004, respectively. Signed by the Mayor on May 21, 2004, it was assigned Act No. 15-434 and transmitted to both Houses of Congress for its review. D.C. Law 15-184 became effective on September 8, 2004.

Subchapter IV. Miscellaneous.

§ 38-2061.01. Employment of retired teachers.

Notwithstanding any other provision of law, the salary of any retired teacher who first becomes entitled to an annuity under this subchapter after November 17, 1979, and who is subsequently employed by the government of the District of Columbia shall be reduced by such amount as is necessary to provide that the sum of such teacher’s annuity under part A of subchapter II of this chapter and compensation for such employment is equal to the salary otherwise payable for the position held by such teacher.

(Aug. 7, 1946, 60 Stat. 875, ch. 779, § 25, as added Nov. 17, 1979, 93 Stat. 922, Pub. L. 96-122, § 257.)

Cross references. — District of Columbia retirement board, members entitled to compensation exempt from provisions of this section, see § 1-711.

Prior Codifications. — 1981 Ed., § 31-1245.

1973 Ed., § 31-739f.

§ 38-2061.02. Retirement credit for leave without pay.

Any teacher who, on or after June 27, 1960, retires pursuant to part A of subchapter II of this chapter shall be entitled to have included in the years of service creditable to him for retirement purposes any period of authorized leave of absence which was taken by him without pay, and for educational purposes; except that credit for any such period shall be conditioned upon payment by such teacher to the Custodian of Retirement Funds (as defined in § 1-702(6)), for deposit in the District of Columbia Teachers’ Retirement Fund established by § 1-713(a), of a sum equal to the accumulated contributions which would have been credited to his individual account if he had remained on active duty in the public schools of the District of Columbia during any such

period plus interest computed in accordance with § 38-2023.14(b); provided, that in order to receive such retirement credit a teacher must produce evidence satisfactory to the Superintendent of Schools of the District of Columbia that the authorized leave of absence without pay was taken for educational purposes.

(June 27, 1960, 74 Stat. 222, Pub. L. 86-525; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(3), 253(b).)

Cross references. — District of Columbia teachers retirement fund, see § 1-713.

Retirement fund for teachers, see § 1-903.02.

Section references. — This section is referred to in §§ 1-782.2 and 38-2023.14.

Prior Codifications. — 1981 Ed., § 31-1251.

1973 Ed., § 31-745.

CHAPTER 21. INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL.

Sec.

38-2101. Authority to enter into agreement.

38-2102. Designated state official.

Sec.

38-2103. Filing and publication of contracts.

38-2104. Definition.

§ 38-2101. Authority to enter into agreement.

The Mayor of the District of Columbia is authorized to enter into and execute on behalf of the District of Columbia an agreement with any state or states legally joining therein in the form substantially as follows:

THE INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

Article I — Purpose, Findings, and Policy

1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party States find that included in the large movement of population among all sections of the Nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Agreement can increase the availability of educational manpower.

Article II — Definitions

As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

1. "Educational personnel" means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.

2. "Designated State official" means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.

3. "Accept", or any variant thereof, means to recognize and give effect to one or more determinations of another State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.

4. "State" means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

5. "Originating State" means a State (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

6. "Receiving State" means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III — Interstate Educational Personnel Contracts

1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated State officials enter into it, and the subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated State official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on basis sufficiently comparable, even though not identical to that prevailing in his own State.

2. Any such contract shall provide for:

(a) Its duration.

(b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.

(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(d) Any other necessary matters.

3. No contract made pursuant to this Agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating State approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any person qualified because of successful completion of a program prior to January 1, 1954.

5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate

or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving State.

6. A contract committee composed of the designated State officials of the contracting States or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

Article IV — Approved and Accepted Programs

1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that State.

2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V — Interstate Cooperation

The party States agree that:

1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this Agreement.

2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI — Agreement Evaluation

The designated State officials of any party States may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

Article VII — Other Arrangements

Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

Article VIII — Effect and Withdrawal

1. This Agreement shall become effective when enacted into law by two States. Thereafter it shall become effective as to any State upon its enactment of this Agreement.

2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX — Construction and Severability

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters.

(Dec. 7, 1974, 88 Stat. 1612, Pub. L. 93-515, title I, § 101.)

Prior Codifications. — 1981 Ed., § 31-1301.

1973 Ed., § 13-1801.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Complementary Legislation: Ala.—Code 1975, §§ 16-23A-1 to 16-23A-3. Alaska—AS 14.20.620 to 14.20.650. Cal.—West's Ann.Cal.Educ.Code, §§ 12500, 12501. Del.—14 Del.C. § 8213. D.C.—D.C. Official Code, 2001

Ed. §§ 38-2101 to 38-2104. Fla.—West's F.S.A. §§ 1012.99 to 1012.992. Hawaii—H R S §§ 315-1 to 315-3. Idaho—I.C. §§ 33-4104 to 33-4106. Iowa—I.C.A. §§ 272A.1 to 272A.3. Kan.—K.S.A. 72-60a01 to 72-60a03. Ky.—KRS 161.124, 161.126. Maine—20-A M.R.S.A. §§ 13901 to 13909. Md.—Code, Education, §§ 6-601 to 6-604. Mass.—M.G.L.A. c. 69 App., §§ 3-1 to 3-3. Mich.—M.C.L.A. §§ 388.1371 to 388.1373. Minn.—M.S.A. §§ 122A.90 to 122A.92. Mt.—M.C.A. 20-4-121 to 20-4-123. N.H.—RSA 200-E:1 to 200-E:3. N.J.—N.J.S.A. 18A:26-11 to 18A:26-20. N.Y.—McKinney's Education Law, § 3030. N.C.—G.S. §§ 115C-349 to 115C-358. Ohio—R.C. §§ 3319.42 to 3319.44. Okl.—70 Okl.St.Ann. §§ 508.1 to 508.3. Pa.—24 P.S. §§ 2401.1 to 2401.3. R.I.—Gen.Laws. 1956, § 16-11-5. S.C.—Code 1976, §§ 59-27-10 to 59-27-30. S.D.—SDCL 13-42-18 to 13-42-20. Utah—U.C.A. 1953, 53A-6-201 to 53A-6-211. Vt.—16 V.S.A. §§ 2041 to 2049. Va.—Code 1950, §§ 22.1-316 to 22.1-318. Wash.—West's RCWA 28A.690.010 to 28A.690.030. W.Va.—Code, 18-10E-1, 18-10E-2. Wis.—W.S.A. 115.46 to 115.48.

§ 38-2102. Designated state official.

The "designated state official" for the District of Columbia shall be the Superintendent of Schools of the District of Columbia. The Superintendent shall enter into contracts pursuant to Article III of the Agreement only with the

approval of the specific text thereof by the Board of Education of the District of Columbia.

(Dec. 7, 1974, 88 Stat. 1615, Pub. L. 93-515, title I, § 102.)

Prior Codifications. — 1981 Ed., § 31-1302. 1973 Ed., § 31-1802.

§ 38-2103. Filing and publication of contracts.

True copies of all contracts made on behalf of the District of Columbia pursuant to the Agreement shall be kept on file in the office of the Board of Education of the District of Columbia and in the office of the Mayor of the District of Columbia. The Superintendent of Schools shall publish all such contracts in convenient form.

(Dec. 7, 1974, 88 Stat. 1615, Pub. L. 93-515, title I, § 103.)

Prior Codifications. — 1981 Ed., § 31-1303.

1973 Ed., § 31-1803.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 38-2104. Definition.

As used in the Interstate Agreement on Qualification of Educational Personnel, the term "Governor" when used with reference to the District of Columbia shall mean the Mayor of the District of Columbia.

(Dec. 7, 1974, 88 Stat. 1615, Pub. L. 93-515, title I, § 104.)

Prior Codifications. — 1981 Ed., § 31-1304.

1973 Ed., § 31-1804.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 22. COMPUTER LITERACY AND TRAINING FOR TEACHERS.

Sec.

38-2202. [Repealed].

38-2203. [Repealed].

Sec.

38-2204. [Repealed].

38-2205. [Repealed].

§ 38-2201. Establishment of the 21st Century Public School Information Technology Program. [Expired].

Expired.

(Mar. 20, 1998, D.C. Law 12-60, § 1402, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 31-2521.

Temporary Addition of Section. — Sections 1401 to 1406 of D.C. Law 12-59 enacted §§ 31-2521 to 31-2525, comprising subchapter II of Chapter 25 of Title 31 1981 Ed. .

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary addition of subchapter II, see §§ 1401 to 1406 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196); and see §§ 1401 to 1406 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provided for the application of the act.

Legislative history of Law 12-59. — Law 12-59, the “Fiscal Year 1998 Revised Budget Support Temporary Act of 1997,” was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on

October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Short title. — 21st Century Public School Information Technology Program Act of 1997: Section 1401 of D.C. Law 12-60 provided that title XIV of the act may be cited as the “21st Century Public School Information Technology Program Act of 1997.”

Editor’s notes. — Editor’s Note Section 1406 of D.C. Law 12-60 provided that this chapter shall expire in 4 years after March 20, 1998. Sections 38-2201 to 38-2205 expired effective March 21, 2002.

§ 38-2202. Computer literacy requirement for teachers. [Expired].

Expired.

(Mar. 20, 1998, D.C. Law 12-60, § 1403, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 31-2522.

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2201.

Emergency legislation. — For temporary addition of subchapter, see note to § 38-2201.

Legislative history of Law 12-59. — For

legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 38-2201.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 38-2201.

Editor’s notes. — 21st Century Public

School Information Technology Program Act of 1997: See Historical and Statutory Notes following § 38-2201.

§ 38-2203. Establishment of the 21st Century Public School Information Technology Program Fund. [Expired].

Expired.

(Mar. 20, 1998, D.C. Law 12-60, § 1404, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 31-2523.

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2201.

Emergency legislation. — For temporary addition of subchapter, see note to § 38-2201.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 38-2201.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 38-2201.

Editor's notes. — 21st Century Public School Information Technology Program Act of 1997: See Historical and Statutory Notes following § 38-2201.

§ 38-2204. Eligibility for funding. [Expired].

Expired.

(Mar. 20, 1998, D.C. Law 12-60, § 1405, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 31-2524.

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2201.

Emergency legislation. — For temporary addition of subchapter, see note to § 38-2201.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 38-2201.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 38-2201.

Editor's notes. — 21st Century Public School Information Technology Program Act of 1997: See Historical and Statutory Notes following § 38-2201.

§ 38-2205. Sunset provision. [Expired].

Expired.

(Mar. 20, 1998, D.C. Law 12-60, § 1406, 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 31-2525.

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2201.

Emergency legislation. — For temporary addition of subchapter, see note to § 38-2201.

Legislative history of Law 12-59. — For

legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 38-2201.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 38-2201.

CHAPTER 22A. HOUSING SUPPORT FOR TEACHERS PROGRAM.

Sec.

- 38-2231. Definitions [Not funded].
 38-2232. Establishment of the Housing Support for Teachers Program [Not Funded].
 38-2233. Eligibility to participate in the Program [not Funded].
 38-2234. Commitment period, service agreement, and penalties [Not Funded].

Sec.

- 38-2235. Selection of Program Participants [Not Funded].
 38-2236. Housing Support for Teachers Fund [Not Funded].
 38-2237. Responsibilities of the OSSE [Not Funded].
 38-2238. Rules [Not Funded].
 38-2239. Availability of funds [Not Funded].

§ 38-2231. Definitions [Not funded].

Omitted.

(Dec. 21, 2007, D.C. Law 17-66, § 2, 54 DCR 10986.)

Legislative history of Law 17-66. — Law 17-66, the “Housing Support for Teachers Act of 2007”, was introduced in Council and assigned Bill No. 17-95 which was referred to the Committee on Housing and Urban Affairs. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 26, 2007, it was assigned Act No. 17-171 and transmitted to both Houses of Congress for its review. D.C. Law 17-66 became effective on December 21, 2007.

Editor’s notes. — Section 10 of D.C. Law 17-66 provided that this act shall apply upon the inclusion of its fiscal effect in a Congressional appropriations act.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-66 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-66, are not in effect.

§ 38-2232. Establishment of the Housing Support for Teachers Program [Not Funded].

Omitted.

(Dec. 21, 2007, D.C. Law 17-66, § 3, 54 DCR 10986.)

Legislative history of Law 17-66. — For Law 17-66, see notes following § 38-2231.

Editor’s notes. — Section 10 of D.C. Law 17-66 provided that this act shall apply upon the inclusion of its fiscal effect in a Congressional appropriations act.

The Budget Director of the Council of the

District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-66 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-66, are not in effect.

§ 38-2233. Eligibility to participate in the Program [not Funded].

Omitted.

(Dec. 21, 2007, D.C. Law 17-66, § 4, 54 DCR 10986.)

Legislative history of Law 17-66. — For Law 17-66, see notes following § 38-2231.

Editor’s notes. — Section 10 of D.C. Law 17-66 provided that this act shall apply upon

the inclusion of its fiscal effect in a Congressional appropriations act.

The Budget Director of the Council of the District of Columbia has determined, as of

February 15, 2012, that the fiscal effect of Law 17-66 has not been included in an approved budget and financial plan. Therefore, the pro-

visions of this section, enacted by Law 17-66, are not in effect.

§ 38-2234. Commitment period, service agreement, and penalties [Not Funded].

Omitted.

(Dec. 21, 2007, D.C. Law 17-66, § 5, 54 DCR 10986.)

Legislative history of Law 17-66. — For Law 17-66, see notes following § 38-2231.

Editor's notes. — Section 10 of D.C. Law 17-66 provided that this act shall apply upon the inclusion of its fiscal effect in a Congressional appropriations act.

The Budget Director of the Council of the

District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-66 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-66, are not in effect.

§ 38-2235. Selection of Program Participants [Not Funded].

Omitted.

(Dec. 21, 2007, D.C. Law 17-66, § 6, 54 DCR 10986.)

Legislative history of Law 17-66. — For Law 17-66, see notes following § 38-2231.

Editor's notes. — Section 10 of D.C. Law 17-66 provided that this act shall apply upon the inclusion of its fiscal effect in a Congressional appropriations act.

The Budget Director of the Council of the

District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-66 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-66, are not in effect.

§ 38-2236. Housing Support for Teachers Fund [Not Funded].

Omitted.

(Dec. 21, 2007, D.C. Law 17-66, § 7, 54 DCR 10986.)

Legislative history of Law 17-66. — For Law 17-66, see notes following § 38-2231.

Editor's notes. — Section 10 of D.C. Law 17-66 provided that this act shall apply upon the inclusion of its fiscal effect in a Congressional appropriations act.

The Budget Director of the Council of the

District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-66 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-66, are not in effect.

§ 38-2237. Responsibilities of the OSSE [Not Funded].

Omitted.

(Dec. 21, 2007, D.C. Law 17-66 § 8, 54 DCR 10986.)

Legislative history of Law 17-66. — For Law 17-66, see notes following § 38-2231.

Editor's notes. — Section 10 of D.C. Law 17-66 provided that this act shall apply upon

the inclusion of its fiscal effect in a Congressional appropriations act.

The Budget Director of the Council of the District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law

17-66 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-66, are not in effect.

§ 38-2238. Rules [Not Funded].

Omitted.

(Dec. 21, 2007, D.C. Law 17-66, § 9, 54 DCR 10986.)

Legislative history of Law 17-66. — For Law 17-66, see notes following § 38-2231.

Editor's notes. — Section 10 of D.C. Law 17-66 provided that this act shall apply upon the inclusion of its fiscal effect in a Congressional appropriations act.

The Budget Director of the Council of the

District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-66 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-66, are not in effect.

§ 38-2239. Availability of funds [Not Funded].

Omitted.

(Dec. 21, 2007, D.C. Law 17-66, § 10, 54 DCR 10986.)

Legislative history of Law 17-66. — For Law 17-66, see notes following § 38-2231.

Editor's notes. — Section 10 of D.C. Law 17-66 provided that this act shall apply upon the inclusion of its fiscal effect in a Congressional appropriations act.

The Budget Director of the Council of the

District of Columbia has determined, as of February 15, 2012, that the fiscal effect of Law 17-66 has not been included in an approved budget and financial plan. Therefore, the provisions of this section, enacted by Law 17-66, are not in effect.

SUBTITLE VI. EDUCATION FOR HEARING IMPAIRED PERSONS.

CHAPTER 23. GALLAUDET COLLEGE.

Subchapter I. Continuation and Administration

- Sec.
38-2301. Appropriation for indigent blind children.
38-2302. Transfer of real estate.
38-2303. Supervision.
38-2304. Report of Convention of American Instructors of the Deaf.

Sec.

38-2305 to 38-2314. [Repealed].

Subchapter II. Model Secondary School for the Deaf [Repealed]

38-2321 to 38-2323. [Repealed].

Subchapter III. Demonstration Elementary School for the Deaf [Repealed]

38-2331 to 38-2334. [Repealed].

Subchapter I. Continuation and Administration.

§ 38-2301. Appropriation for indigent blind children.

The indefinite appropriation to pay for the instruction of the indigent blind children of the District of Columbia, formerly instructed in Gallaudet University shall be paid out of the revenues of the District of Columbia.

(Mar. 3, 1899, 30 Stat. 1101, ch. 424, § 1; Mar. 4, 1911, 36 Stat. 1422, ch. 285, § 1.)

Prior Codifications. — 1981 Ed., § 31-1801.

1973 Ed., § 31-1020.

References in text. — “Gallaudet University” was substituted for “Gallaudet College”

pursuant to § 38-2401.01. “Gallaudet College” had previously been substituted for “Columbia Institution for the Deaf” pursuant to former § 38-2305.

§ 38-2302. Transfer of real estate.

The title to all that parcel of land lying between the west boundary of West Virginia Avenue, as said avenue was laid on July 1, 1916, with a width of 66 feet, and the east boundary of the grounds of Gallaudet University, said parcel of land fronting on Florida Avenue about ten and one-half feet and containing one-tenth of an acre, more or less, and being formerly part of the Baltimore and Ohio Railroad right-of-way, shall be vested in Gallaudet University, United States of America, trustee, and the Secretary of the Interior is authorized and directed to issue a patent for the said parcel of land to the said Gallaudet College.

(July 1, 1916, 39 Stat. 310, ch. 209.)

Prior Codifications. — 1981 Ed., § 31-1802.

1973 Ed., § 31-1021.

References in text. — “Gallaudet University” was substituted for “Gallaudet College” pursuant to § 38-2401.01. “Gallaudet College”

had previously been substituted for “the Columbia Institution for the Deaf” throughout this section, pursuant to former § 38-2305.

Editor’s notes. — Adjustment of boundaries: See Act of August 3, 1939, 53 Stat. 1179, ch. 414, §§ 1 to 3.

§ 38-2303. **Supervision.**

The Secretary of Education is charged with the supervision of public business relating to Gallaudet University.

(R.S., § 441; Mar. 4, 1911, 36 Stat. 1422, ch. 285; 1940 Reorg. Plan No. IV, § 11; 1953 Reorg. Plan No. 1; June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

Prior Codifications. — 1981 Ed., § 31-1803.

1973 Ed., § 31-1022.

References in text. — “Gallaudet University” was substituted for “Gallaudet College” pursuant to § 38-2401.01. “Gallaudet College” had previously been substituted for “Columbia

Institution for the Deaf” at the end of this section, pursuant to former § 38-2305.

“Secretary of Education” was substituted for “Secretary of Health, Education and Welfare” near the beginning of this section, pursuant to § 301 of the Act of October 17, 1979, 93 Stat. 677, Pub. L. 96-88.

§ 38-2304. **Report of Convention of American Instructors of the Deaf.**

The Convention of American Instructors of the Deaf shall report to Congress, through the President of Gallaudet University at Washington, District of Columbia, such portions of its proceedings and transactions as its officers shall deem to be of general public interest and value concerning the education of the deaf.

(Jan. 26, 1897, 29 Stat. 499, ch. 94, § 4; Mar. 4, 1911, 36 Stat. 1422, ch. 285; June 18, 1954, 68 Stat. 265, ch. 324, § 1.)

Prior Codifications. — 1981 Ed., § 31-1804.

1973 Ed., § 31-1024.

References in text. — “Gallaudet University” was substituted for “Gallaudet College”

pursuant to § 38-2401.01. “Gallaudet College” had previously been substituted for “Columbia Institution for the Deaf” near the beginning of this section, pursuant to former § 38-2305.

§ 38-2305. **Successor to Columbia Institution for the Deaf. [Repealed].**

Repealed.

(June 18, 1954, 68 Stat. 265, ch. 324, § 1; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1805.

1973 Ed., § 31-1025.

§ 38-2306. **Purposes. [Repealed].**

Repealed.

(June 18, 1954, 68 Stat. 265, ch. 324, § 2; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1806.

1973 Ed., § 31-1026.

§ 38-2307. Property rights; outstanding obligations; conveyances. [Repealed].

Repealed.

(June 18, 1954, 68 Stat. 265, ch. 324, § 3; Sept. 13, 1960, 74 Stat. 917, Pub. L. 86-776, § 4; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1807. 1973 Ed., § 31-1027.

§ 38-2308. Gifts of property. [Repealed].

Repealed.

(June 18, 1954, 68 Stat. 265, ch. 324, § 4; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1808. 1973 Ed., § 31-1028.

§ 38-2309. Board of Directors — Appointment; composition; terms; removal. [Repealed].

Repealed.

(June 18, 1954, 68 Stat. 265, ch. 324, § 5; July 23, 1968, 82 Stat. 397, Pub. L. 90-415, §§ 1,2; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1809. 1973 Ed., § 31-1029.

§ 38-2310. Same — Powers. [Repealed].

Repealed.

(June 18, 1954, 68 Stat. 266, ch. 324, § 6; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1810. 1973 Ed., § 31-1030.

§ 38-2311. Financial transactions and accounts; annual report to the Secretary of Education. [Repealed].

Repealed.

(June 18, 1954, 68 Stat. 266, ch. 324, § 7; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1811. 1973 Ed., § 31-1031.

§ 38-2312. Appropriations. [Repealed].

Repealed.

(June 18, 1954, 68 Stat. 266, ch. 324, § 8; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1812. 1973 Ed., § 31-1032.

§ 38-2313. Grant of certain lands — Transfer. [Repealed].

Repealed.

(Sept. 13, 1960, 74 Stat. 916, Pub. L. 86-776, § 1; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1813. 1973 Ed., § 31-1033.

§ 38-2314. Delivery of deed. [Repealed].

Repealed.

(Sept. 13, 1960, 74 Stat. 917, Pub. L. 86-776, § 2; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1814. 1973 Ed., § 31-1034.

Subchapter II. Model Secondary School for the Deaf [Repealed].

§ 38-2321. Authorization of appropriations. [Repealed].

Repealed.

(Oct. 15, 1966, 80 Stat. 1027, Pub. L. 89-694, § 2; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1821. 1973 Ed., § 31-1051.

§ 38-2322. Definitions. [Repealed].

Repealed.

(Oct. 15, 1966, 80 Stat. 1027, Pub. L. 89-694, § 3; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1822. 1973 Ed., § 31-1052.

§ 38-2323. Agreement with Gallaudet College; annual report. [Repealed].

Repealed.

(Oct. 15, 1966, 80 Stat. 1027, Pub. L. 89-694, § 4; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1823. 1973 Ed., § 31-1053.

Subchapter III. Demonstration Elementary School for the Deaf
[Repealed].**§ 38-2331. Operation authorized. [Repealed].**

Repealed.

(Dec. 24, 1970, 84 Stat. 1579, Pub. L. 91-587, § 1; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1831. 1973 Ed., § 31-1071.

§ 38-2332. Definitions. [Repealed].

Repealed.

(Dec. 24, 1970, 84 Stat. 1579, Pub. L. 91-587, § 2; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1832. 1973 Ed., § 31-1072.

§ 38-2333. Authorization of appropriations. [Repealed].

Repealed.

(Dec. 24, 1970, 84 Stat. 1579, Pub. L. 91-587, § 3; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1833. 1973 Ed., § 31-1073.

§ 38-2334. Design and construction of facilities. [Repealed].

Repealed.

(Dec. 24, 1970, 84 Stat. 1579, Pub. L. 91-587, § 4; Aug. 4, 1986, 100 Stat. 1790, Pub. L. 99-371, § 410.)

Prior Codifications. — 1981 Ed., § 31-1834. 1973 Ed., § 31-1074.

CHAPTER 24. EDUCATION FOR THE DEAF.

Subchapter I. Gallaudet University; National Technical Institute for the Deaf

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 38-2411.08, 38-2411.09. [Renumbered].

Subchapter I. Gallaudet University; National Technical Institute for the Deaf.

PART A.

GALLAUDET UNIVERSITY.

§ 38-2401.01. Continuation of Gallaudet College as Gallaudet University.

(a) *Gallaudet University.* — The Gallaudet College created by an Act entitled “An Act to amend the charter of the Columbia Institution for the Deaf, change its name, define its corporate powers, and provide for its organization and administration, and for other purposes” is continued as a body corporate under the name of Gallaudet University. Hereafter, Gallaudet College shall be known as Gallaudet University and have perpetual succession and shall have the powers and be subject to the limitations contained in this chapter.

(b) *Purpose.* — The purpose of Gallaudet University shall be to provide education and training to individuals who are deaf and otherwise to further the education of individuals who are deaf.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 101; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 151(a)(1), (4); Aug. 11, 1993, 107 Stat. 732, Pub. L. 103-73, § 203(a).)

Prior Codifications. — 1981 Ed., § 31-1841.1.

References in text. — “An Act to amend the charter of the Columbia Institution for the

Deaf, change its name, define its corporate powers, and provide for its organization and administration, and for other purposes,” referred to in subsection (a), is 68 Stat. 265.

§ 38-2401.02. Property rights.

(a) *Property rights described.* — Gallaudet University is vested with all the property and the rights of property, and shall have and be entitled to use all authority, privileges, and possessions and all legal rights which it has, or which it had or exercised under any former name, including the right to sue and be sued and to own, acquire, sell, mortgage, or otherwise dispose of property it may own now or hereafter acquire. Gallaudet University shall also be subject to all liabilities and obligations now outstanding against the corporation under any former name.

(b) *Disposal of real property.* —

(1) With the approval of the Secretary, the Board of Trustees of Gallaudet University may convey fee simple title by deed, convey by quitclaim deed, mortgage, or otherwise dispose of any or all real property title to which is vested in Gallaudet University, Gallaudet College, the Columbia Institution for the Deaf, or any predecessor corporation.

(2) The proceeds of any such disposition shall be considered a part of the capital structure of the corporation, and may be used solely for the acquisition of real estate for the use of the corporation, for the construction, equipment, or improvement of buildings for such use, or for investment purposes, but, if invested, only the income from the investment may be used for current expenses of the corporation.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 102; Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(b).)

Prior Codifications. — 1981 Ed., § 31-1841.2.

§ 38-2401.03. Board of Trustees.

(a) *Composition of the Board.* —

(1) Gallaudet University shall be under the direction and control of a Board of Trustees, composed of 21 members who shall include:

(A) Three public members of whom (i) one shall be a United States Senator appointed by the President of the Senate, and (ii) two shall be Representatives appointed by the Speaker of the House of Representatives; and

(B) Eighteen other members, all of whom shall be elected by the Board of Trustees and of whom one shall be elected pursuant to regulations of the Board of Trustees, on nomination by the Gallaudet University Alumni Association, for a term of 3 years.

(2) The members appointed from the Senate and House of Representatives shall be appointed for a term of 2 years at the beginning of each Congress,

shall be eligible for reappointment, and shall serve until their successors are appointed.

(3) The Board of Trustees shall have the power to fill any vacancy in the membership of the Board except for public members. Nine trustees shall constitute a quorum to transact business. The Board of Trustees, by vote of a majority of its membership, is authorized to remove any member of their body (except the public members) who may refuse or neglect to discharge the duties of a trustee, or whose removal would, in the judgment of said majority, be to the interest and welfare of said corporation.

(b) *Powers of the Board.* — The Board of Trustees is authorized to:

(1) Make such rules, policies, regulations, and bylaws, not inconsistent with the Constitution and laws of the United States, as may be necessary for the good government of Gallaudet University, for the management of the property and funds of such corporation (including the construction of buildings and other facilities), and for the admission, instruction, care, and discharge of students;

(2) Provide for the adoption of a corporate seal and for its use;

(3) Fix the date of holding their annual and other meetings;

(4) Appoint a president and establish policies, guidelines, and procedures related to the appointments, the salaries, and the dismissals of professors, instructors, and other employees of Gallaudet University, including the adoption of a policy of outreach and recruitment to employ and advance in employment qualified individuals with disabilities, particularly individuals who are deaf or hard of hearing;

(5) Elect a chairperson and other officers and prescribe their duties and terms of office, and appoint an executive committee to consist of 5 members, and vest the committee with such of its powers during periods between meetings of the Board as the Board deems necessary;

(6) Establish such schools, departments, and other units as the Board of Trustees deems necessary to carry out the purpose of Gallaudet University;

(7) Confer such degrees and marks of honor as are conferred by colleges and universities generally, and issue such diplomas and certificates of graduation as, in its opinion, may be deemed advisable, and consistent with academic standards;

(8) Subject to § 38-2402.03, control expenditures of all moneys appropriated by Congress for the benefit of Gallaudet University; and

(9) Control the expenditure and investment of any moneys or funds or property which Gallaudet University may have or may receive from sources other than appropriations by Congress.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 103; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(c), 111; Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(c).)

Prior Codifications. — 1981 Ed., § 31-1841.3.

§ 38-2401.04. Elementary and secondary education programs.

(a) *General authority.* —

(1)(A) The Board of Trustees of Gallaudet University is authorized, in accordance with the agreement under § 38-2401.05, to maintain and operate exemplary elementary and secondary education programs, projects, and activities for the primary purpose of developing, evaluating, and disseminating innovative curricula, instructional techniques and strategies, and materials that can be used in various educational environments serving individuals who are deaf or hard of hearing throughout the nation.

(B) The elementary and secondary education programs described in subparagraph (A) of this paragraph shall serve students with a broad spectrum of needs, including students who are lower achieving academically, who come from non-English-speaking homes, who have secondary disabilities, who are members of minority groups, or who are from rural areas.

(C) The elementary and secondary education programs described in subparagraph (A) of this paragraph shall include:

(i) The Kendall Demonstration Elementary School, to provide day facilities for elementary education for students who are deaf from the age of onset of deafness to age fifteen, inclusive, but not beyond the eighth grade or its equivalent, to provide such students with the vocational, transitional, independent living, and related services they need to function independently, and to prepare such students for high school and other secondary study; and

(ii) The Model Secondary School for the Deaf, to provide day and residential facilities for secondary education for students who are deaf from grades nine through twelve, inclusive, to provide such students with the vocational, transitional, independent living, and related services they need to function independently, and to prepare such students for college, other postsecondary opportunities, or the workplace.

(2) The Model Secondary School for the Deaf may provide residential facilities for students enrolled in the school:

(A) Who live beyond a reasonable commuting distance from the school;
or

(B) For whom such residency is necessary for them to receive a free appropriate public education within the meaning of part B of the Individuals with Disabilities Education Act [20 U.S.C. § 1411 et seq.].

(b) *Administrative requirements.* —

(1) The elementary and secondary education programs shall:

(A) Provide technical assistance and outreach throughout the nation to meet the training and information needs of parents of infants, children, and youth who are deaf or hard of hearing;

(B) Provide technical assistance and training to personnel for use in teaching (i) students who are deaf or hard of hearing, in various educational environments, and (ii) students who are deaf or hard of hearing with a broad spectrum of needs as described in subsection (a); and

(C) Establish and publish priorities for research, development, and demonstration through a process that allows for public input.

(2) To the extent possible, the elementary and secondary education programs shall provide the services required under paragraph (1) in an equitable manner, based on the national distribution of students who are deaf or hard of hearing in educational environments as determined by the Secretary for purposes of § 618(b) of the Individuals with Disabilities Education Act [20 U.S.C. § 1418(b)]. Such educational environments shall include:

- (A) Regular classes;
- (B) Resource rooms;
- (C) Separate classes;
- (D) Separate, public or private, nonresidential schools; and
- (E) Separate, public or private, residential schools and homebound or hospital environments.

(3) If a local educational agency, intermediate educational unit, or state educational agency refers a child to, or places a child in, one of the elementary or secondary education programs to meet its obligation to make available a free appropriate public education under part B of the Individuals with Disabilities Education Act [20 U.S.C. § 1411 et seq.], the agency or unit shall be responsible for ensuring that the special education and related services provided to the child by the education program are in accordance with part B of that Act and that the child is provided the rights and procedural safeguards under § 615 of that Act [20 U.S.C. § 1415].

(4) If the parents or guardian places a child in one of the elementary or secondary education programs, the University shall:

(A) Notify the appropriate local educational agency, intermediate educational unit, or state educational agency of that child's attendance in the program;

(B) Work with local educational agencies, intermediate educational units, and state educational agencies, where appropriate, to ensure a smooth transfer of the child to and from that program; and

(C) Provide the child a free appropriate public education in accordance with part B of the Individuals with Disabilities Education Act and procedural safeguards in accordance with the following provisions of § 615 of such Act:

(i) Subparagraphs (A), (C), (D), and (E) of paragraph (1) of subsection (b), and paragraph (2) of such subsection.

(ii) Subsection (d), except the portion of paragraph (4) requiring that findings and decisions be transmitted to a state advisory panel.

(iii) Paragraphs (1) through (3) of subsection (e). Paragraph (3) of such subsection is not applicable to a decision by the University to refuse to admit or to dismiss a child, except that, before dismissing any child, the University shall give at least 60 days notice to the child's parents and to the local educational agency in which the child resides.

(iv) Subsection (f).

(Aug. 4, 1986, Pub. L. 99-371, § 104, as added Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 112; Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(d); Apr. 9, 1997, D.C. Law 11-255, § 35(a), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 31-1841.3a.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both

Houses of Congress for its review. D.C. Law 11-255 became effective April 9, 1997.

References in text. — “The Individuals with Disabilities Education Act” and “§ 615 of that Act”, referred to in (a)(2)(B), (b)(3) and (b)(4)(C) are codified at 20 U.S.C. § 1400 et seq. and 20 U.S.C. § 1415, respectively.

“Section 618(b) of the Individuals with Disabilities Education Act”, referred to in (b)(2), is codified at 20 U.S.C. § 1418(b).

§ 38-2401.05. Agreement with Gallaudet University.

(a) *General authority.* — The Secretary and Gallaudet University shall establish, within one year after October 1, 1992, a new agreement governing the operation and national mission activities, including construction and provision of equipment, of the elementary and secondary education programs at the University. The Secretary and the University shall periodically update the agreement as determined to be necessary by the Secretary or the University.

(b) *Provisions of agreement.* — The agreement shall:

(1) Provide that federal funds appropriated for the benefit of the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf will be used only for the purposes for which appropriated and in accordance with the applicable provisions of this chapter and such agreement;

(2) Provide that the University will make an annual report, to be part of the report required under § 38-2402.04, to the Secretary on the operations and national mission activities of the elementary and secondary education programs, including such other information as the Secretary may consider necessary;

(3) Provide that in the design and construction of any facilities, maximum attention will be given to innovative auditory and visual devices and installations appropriate for the educational functions of such facilities;

(4) Provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by federal funds appropriated for the benefit of the Kendall Demonstration Elementary School or the Model Secondary School for the Deaf will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. § 276a — 276a-5) [now see 40 U.S.C. § 3142] commonly referred to as the Davis-Bacon Act; except that the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and § 2 of the Act of June 13, 1934 (40 U.S.C. § 276c) [now see 40 U.S.C. § 3145]; and

(5) Include such other conditions as the Secretary or the University considers necessary to carry out the purposes of this part.

(Aug. 4, 1986, Pub. L. 99-371, § 105, as added Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 113; Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(e).)

Section references. — This section is referred to in § 38-2401.04.

Prior Codifications. — 1981 Ed., § 31-1841.3b.

PART B.

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF.

§ 38-2401.11. **Authority.**

For the purpose of providing a residential facility for postsecondary technical training and education for individuals who are deaf in order to prepare them for successful employment, the institution of higher education with which the Secretary has an agreement under this part is authorized to operate and maintain a National Technical Institute for the Deaf.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 111, formerly § 201; renumbered Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(b)(4); Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, § 203(f).)

Prior Codifications. — 1981 Ed., § 31-1841.4a.

§ 38-2401.12. **Agreement for National Technical Institute for the Deaf.**

(a) *General authority.* — (1) The Secretary is authorized to establish or continue an agreement with an institution of higher education for the establishment and operation, including construction and equipment, of a National Technical Institute for the Deaf. The Secretary, in considering proposals from institutions of higher education to enter into an agreement under this chapter, shall give preference to institutions which are located in metropolitan industrial areas.

(2) The Secretary and the institution of higher education with which the Secretary has an agreement under this section shall, within 1 year after October 1, 1992, assess the need for modification of the agreement. The Secretary and the institution of higher education with which the Secretary has an agreement under this section shall also periodically update the agreement as determined to be necessary by the Secretary or the institution.

(b) *Provisions of agreement.* — The agreement shall:

(1) Provide that federal funds appropriated for the benefit of NTID will be used only for the purposes for which appropriated and in accordance with the applicable provisions of this chapter and the agreement made pursuant thereto;

(2) Provide that the Board of Trustees or other governing body of the institution, subject to the approval of the Secretary, will appoint an advisory group to advise the Director of NTID in formulating and carrying out the basic policies governing its establishment and operation, which group shall include individuals who are professionally concerned with education and technical training at the postsecondary school level, persons who are professionally

concerned with activities relating to education and training of individuals who are deaf, and members of the public familiar with the need for services provided by NTID;

(3) Provide that the Board of Trustees or other governing body of the institution will prepare and submit to the Secretary, not later than June 1 following the fiscal year for which the report is submitted, an annual report containing an accounting of all indirect costs paid to the institution of higher education under the agreement with the Secretary, which accounting the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and to the Committee on Labor and Human Resources of the Senate, with such comments and recommendations as the Secretary may deem appropriate;

(4) Include such other conditions as the Secretary deems necessary to carry out the purposes of this part;

(5) Provide that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by federal funds appropriated for the benefit of NTID will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with 40 U.S.C. §§ 276a—276a-5 [now see 40 U.S.C. § 3142] commonly referred to as the Davis-Bacon Act; except that the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. App.) and 40 U.S.C. § 276c [now see 40 U.S.C. § 3145] ; and

(6) Establish a policy of outreach and recruitment to employ and advance in employment qualified individuals with disabilities, particularly individuals who are deaf or hard of hearing.

(c) *Limitation.* — If, within 20 years after the completion of any construction (except minor remodeling or alteration) for which such funds have been paid: (1) the facility ceases to be used for the purposes for which it was constructed or the agreement is terminated, unless the Secretary determines that there is good cause for releasing the institution from its obligation; or (2) the institution ceases to be the owner of the facility, the United States shall be entitled to recover from the applicant or other owner of the facility an amount which has the same ratio with respect to the current market value of the facility as the amount of federal funds expended for construction of such facility bears to the total cost of construction of the facility. The current market value of the facility shall be determined by agreement of the parties or by action brought in the United States district court for the district in which the facility is situated.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 112, formerly § 202; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(4), 121, 151(a)(4); Aug. 11, 1993, 107 Stat. 733, Pub. L. 103-73, §§ 202, 203(g).)

Section references. — This section is referred to in §§ 38-2411.01.

Prior Codifications. — 1981 Ed., § 31-1841.4b.

Subchapter II. General Provisions.

§ 38-2402.01. Definitions.

As used in this chapter:

(1) The term “international student” means an individual who:

(A) Is not a citizen or national of, or lawfully admitted for permanent residence in, the United States;

(B) Does not provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than temporary purposes with the intention of becoming a citizen of, or lawfully admitted for permanent residence in, the United States; and

(C) Is not lawfully admitted for permanent residence in American Samoa, Guam, Palau (but only until the Compact of Free Association with Palau takes effect), the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, or the Virgin Islands.

(2) The term “construction” includes construction and initial equipment of new buildings, and expansion, remodeling, and alteration of existing buildings and equipment therein, including architect’s services, but excluding off-site improvements.

(3) The term “institution of higher education” means an educational institution in any state which (A) admits as regular students only individuals having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (B) is legally authorized within such state to provide a program of education beyond secondary education; (C) provides an educational program for which it awards a bachelor’s degree; (D) includes one or more professional or graduate schools; (E) is a public or nonprofit private institution; and (F) is accredited by a nationally recognized accrediting agency or association. For the purpose of subparagraph (F) of this paragraph, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered.

(4) The term “Secretary” means the Secretary of Education.

(5) The term “state” means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (but only until the Compact of Free Association with Palau takes effect).

(6) The term “NTID” means the National Technical Institute for the Deaf.

(7) The term “University” means Gallaudet University.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 201, formerly § 401; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 131, 151(a)(3), (b), Aug. 11, 1993, 107 Stat. 734, Pub. L. 103-73, § 204(a); Apr. 9, 1997, D.C. Law 11-255, § 35(b), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 31-1842.2a.

legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 38-2401.04.

Legislative history of Law 11-255. — For

§ 38-2402.02. Gifts.

The University and NTID are authorized to receive by gift, devise, bequest, purchase, or otherwise, property, both real and personal, for the use of the University or NTID, or for the use, as appropriate, for any programs, departments, or other units as may be designated in the conveyance or will, and to hold, invest, use, or dispose of such property for the purpose stated in the conveyance or will.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 202, formerly § 402; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 132.)

Prior Codifications. — 1981 Ed., § 31-1842.2b.

§ 38-2402.03. Audit.

(a) *General Accounting Office authority.* — All financial transactions and accounts of the corporation or institution of higher education, as the case may be, in connection with the expenditure of any moneys appropriated by any law of the United States:

(1) For the benefit of Gallaudet University or for the construction of facilities for its use; or

(2) For the benefit of the National Technical Institute for the Deaf or for the construction of facilities for its use;

shall be settled and adjusted in the General Accounting Office.

(b) *Independent audit.* — Gallaudet University shall have an annual independent financial audit made of the programs and activities of the University. The institution of higher education with which the Secretary has an agreement under § 38-2401.12 shall have an annual independent financial audit made of the programs and activities of such institution of higher education, including NTID, and containing specific schedules and analyses for all NTID funds, as determined by the Secretary.

(c) *Limitations regarding expenditure of funds.* —

(1) *In general.* — No funds appropriated under this chapter for Gallaudet University, including the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf, or for the National Technical Institute for the Deaf may be expended on the following:

(A) Alcoholic beverages;

(B) Goods or services for personal use;

(C) Housing and personal living expenses (but only to the extent such expenses are not required by written employment agreement);

(D) Lobbying, except that nothing in this subparagraph shall be construed to prohibit the University and NTID from educating the Congress, the Secretary, and others regarding programs, projects, and activities conducted at those institutions; or

(E) Membership in country clubs and social or dining clubs and organizations.

(2) *Policies.* —

(A) Not later than 180 days after October 1, 1992, the University and NTID shall develop policies, to be applied uniformly, for the allowability of expenditures for each institution. These policies should reflect the unique nature of these institutions. The principles established by the Office of Management and Budget for costs of educational institutions may be used as guidance in developing these policies. General principles relating to allowability and reasonableness of all costs associated with the operations of the institutions shall be addressed. These policies shall be submitted to the Secretary for review and comments, and to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(B) Policies under subparagraph (A) of this paragraph shall include the following:

- (i) Noninstitutional professional activities;
- (ii) Fringe benefits;
- (iii) Interest on loans;
- (iv) Rental cost of buildings and equipment;
- (v) Sabbatical leave;
- (vi) Severance pay;
- (vii) Travel; and
- (viii) Royalties and other costs for uses of patents.

(C) The Secretary is not authorized to add items to those specified in subparagraph (B) of this paragraph.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 203, formerly § 403; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 133; Aug. 11, 1993, 107 Stat. 732, 734, Pub. L. 103-73, §§ 202, 204(b); Apr. 9, 1997, D.C. Law 11-255, § 35(c), 44 DCR 1271.)

Section references. — This section is referred to in § 38-2401.03.

Prior Codifications. — 1981 Ed., § 31-1842.3.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 38-2401.04.

§ 38-2402.04. **Reports.**

The Board of Trustees of Gallaudet University and the Board of Trustees or other governing body of the institution of higher education with which the Secretary has an agreement under § 38-2401.12 shall prepare and submit an annual report to the Secretary, and to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate, not later than 100 days after the end of each fiscal year, which shall include the following:

(1) The number of students during the preceding academic year who enrolled and whether these were first-time enrollments, who graduated, who found employment, or who left without completing a program of study, reported under each of the programs of the University (elementary, secondary, preparatory, undergraduate, and graduate) and of NTID;

(2) For the preceding academic year, and to the extent possible, the following data on individuals who are deaf and from minority backgrounds and who are students (at all educational levels) or employees:

(A) The number of students enrolled full- and part-time;

(B) The number of these students who completed or graduated from each of the educational programs;

(C) The disposition of these students upon graduation/completion of programs at NTID and at the University and its elementary and secondary schools in comparison to students from nonminority backgrounds;

(D) The number of students needing and receiving support services (such as tutoring and counseling) at all educational levels;

(E) The number of recruitment activities by type and location for all educational levels;

(F) Employment openings/vacancies and grade level/type of job and number of these individuals that applied and that were hired; and

(G) Strategies (such as parent groups and training classes in the development of individualized education programs) used by the elementary and secondary programs and the extension centers to reach and actively involve minority parents in the educational programs of their children who are deaf or hard of hearing and the number of parents who have been served as a result of these activities;

(3)(A) The annual audited financial statements and auditor's report of the University, as required under § 38-2402.03; and

(B) The annual audited financial statements and auditor's report of the institution of higher education with which the Secretary has an agreement under § 38-2401.12, including specific schedules and analyses for all NTID funds, as required under § 38-2402.03, and such supplementary schedules presenting financial information for NTID for the end of the Federal fiscal year as determined by the Secretary;

(4) For the preceding fiscal year, a statement showing the receipts of the University and NTID and from what federal sources, and a statement showing the expenditures of each institution by function, activity, and administrative and academic unit;

(5) A statement showing the use of funds (both corpus and income) provided by the Federal Endowment Program under § 38-2402.07a;

(6) A statement showing how such Endowment Program funds are invested, what the gains or losses (both realized and unrealized) on such investments were for the most recent fiscal year, and what changes were made in investments during that year; and

(7) Such additional information as the Secretary may consider necessary.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 204, formerly § 404; renumbered and amended Oct 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 134; Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(c).)

Section references. — This section is referred to in § 38-2401.05.

Prior Codifications. — 1981 Ed., § 31-1842.4.

§ 38-2402.05. Monitoring, evaluation, and reporting.

(a) *Activities.* — The Secretary shall conduct monitoring and evaluation activities of the education programs and activities and the administrative operations of the University (including the elementary, secondary, preparatory, undergraduate, and graduate programs) and of NTID. The Secretary may also conduct studies related to the provision of preschool, elementary, secondary, and postsecondary education and other related services to individuals who are deaf or hard of hearing. In carrying out the responsibilities described in this section, the Secretary is authorized to employ such consultants as may be necessary pursuant to § 3109 of Title 5, United States Code.

(b) *Report.* — The Secretary, as part of the annual report required under § 426 of the Department of Education Organization Act, shall include a description of the monitoring and evaluation activities pursuant to subsection (a) of this section, together with such recommendations, including recommendations for legislation, as the Secretary may consider necessary.

(c) *Authorization of appropriations.* — There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993, 1994, 1995, 1996, and 1997 to carry out the monitoring and evaluation activities authorized under this section.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 205, formerly § 405; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 135(a); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(d).)

Prior Codifications. — 1981 Ed., § 31-1842.5.

References in text. — “Section 426 of the Department of Education Organization Act”, referred to in (b), is codified at 20 U.S.C. § 3486.

Editor’s notes. — Secretary to submit report: Section 135(b) of Pub. L. 102-421 provided that not later than 180 days after October 1, 1992, the Secretary of Education shall submit a report to Congress regarding progress made by the Department of Education in implementing the recommendations of the Commission on

Education of the Deaf pertaining to the provision of a free and appropriate public education to children who are deaf, and children who are hard of hearing, and with respect to the establishment of standards for programs and personnel to meet the educational, communicative, and psychological needs of children who are deaf, and children who are hard of hearing. In preparing this report, the Secretary of Education shall solicit input from the community of individuals who are deaf, and individuals who are hard of hearing.

§ 38-2402.06. Liaison for educational programs.

(a) *Designation of liaison.* — Not later than 30 days after August 4, 1986, the Secretary shall designate an individual in the Office of Special Education and Rehabilitative Services of the Department of Education from among individuals who have experience in the education of individuals who are deaf to serve as liaison between the Department and Gallaudet University, the National Technical Institute for the Deaf, and other postsecondary educational programs for the deaf under the Education of the Handicapped Act [20 U.S.C. § 1401 et seq.], the Rehabilitation Act of 1973 [29 U.S.C. § 701 et seq.], and other federal or nonfederal agencies, institutions, or organizations involved with the education or rehabilitation of individuals who are deaf or hard of hearing.

(b) *Duties of liaison.* — The individual serving as liaison for educational programs for individuals who are deaf or hard of hearing shall:

(1) Provide information to institutions regarding the Department's efforts directly affecting the operation of such programs by such institutions;

(2) Review research and other activities carried out by the University, NTID, and other federal or nonfederal agencies, institutions, or organizations involved with the education or rehabilitation of individuals who are deaf or hard of hearing for the purpose of determining overlap and opportunities for coordination among such entities; and

(3) Provide such support and assistance as such institutions may request and the Secretary considers appropriate.

(c) *Authority of Secretary.* — Nothing in this section may be construed to affect the authority of the Secretary under this chapter or any other act with respect to Gallaudet University or the National Technical Institute for the Deaf.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 206, formerly § 406; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 136, 151(a)(4), (5); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(e).)

Prior Codifications. — 1981 Ed., § 31-1842.6.

References in text. — The "Education of the Handicapped Act," referred to in subsection (a), is the Act of April 13, 1970, 84 Stat. 188, Pub. L. 91-230, Title VI, § 662(3), which is codified at 20 U.S.C. § 1401 et seq.

The "Rehabilitation Act of 1973," referred to in subsection (a), is 29 U.S.C. § 701 et seq. (September 26, 1973, 87 Stat. 355, Pub. L. 93-112).

§ 38-2402.07. Gallaudet University Federal Endowment Program. [Repealed].

Repealed.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 207, formerly § 407; renumbered Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(b)(6); repealed Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 137(1).)

Prior Codifications. — 1981 Ed., § 31-1842.7.

§ 38-2402.07a. Federal endowment programs for Gallaudet University and the National Technical Institute for the Deaf.

(a) *Establishment of programs.* —

(1) The Secretary and the Board of Trustees of Gallaudet University are authorized to establish the Gallaudet University Federal Endowment Fund as a permanent endowment fund, in accordance with this section, for the purpose of promoting the financial independence of the University. The Secretary and the Board of Trustees may enter into such agreements as may be necessary to carry out the purposes of this section with respect to the University.

(2) The Secretary and the Board of Trustees or other governing body of the institution of higher education with which the Secretary has an agreement under § 38-2401.12 are authorized to establish the National Technical Institute for the Deaf Federal Endowment Fund as a permanent endowment fund, in accordance with this section, for the purpose of promoting the financial independence of NTID. The Secretary and the Board or other governing body may enter into such agreements as may be necessary to carry out the purposes of this section with respect to NTID.

(b) *Federal payments.* —

(1) The Secretary shall, consistent with this section, make payments to the Federal endowment funds established under subsection (a) of this section from amounts appropriated under subsection (h) of this section for the fund involved.

(2) Subject to the availability of appropriations and the nonfederal matching requirements of paragraph (3) of this subsection, the Secretary shall make payments to each Federal endowment fund in amounts equal to sums contributed to the fund from nonfederal sources (excluding transfers from other endowment funds of the institution involved).

(3) Effective for fiscal year 1993 and each succeeding fiscal year, for any fiscal year in which the sums contributed to the federal endowment fund of the institution involved from nonfederal sources exceed \$1,000,000, the nonfederal contribution to the federal endowment shall be \$2 for each federal dollar provided in excess of \$1,000,000 (excluding transfers from other endowment funds of the institution involved).

(c) *Investments.*

(1) Except as provided in subsection (e) of this section, the University and NTID, respectively, shall invest its federal endowment fund corpus and income in instruments and securities offered through one or more cooperative service organizations of operating educational organizations under section 501(f) of the Internal Revenue Code of 1986, or in low-risk instruments and securities in which a regulated insurance company may invest under the laws of the State in which the institution involved is located.

(2) In managing the investment of its federal endowment fund, the University or NTID shall exercise the judgment and care, under the prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of that person's own business affairs.

(3) Neither the University nor NTID may invest its federal endowment fund corpus or income in real estate, or in instruments or securities issued by an organization in which an executive officer, a member of the Board of Trustees of the University or of the host institution, or a member of the advisory group established under § 38-2401.12 is a controlling shareholder, director, or owner within the meaning of federal securities laws and other applicable laws. Neither the University nor NTID may assign, hypothecate, encumber, or create a lien on the federal endowment fund corpus without specific written authorization of the Secretary.

(d) *Withdrawals and expenditures.* —

(1) Except as provided in paragraph (3)(B) of this subsection, neither the

University nor NTID may withdraw or expend any of the corpus of its federal endowment fund.

(2)(A) The University and NTID, respectively, may withdraw or expend the income of its federal endowment fund only for expenses necessary to the operation of that institution, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research.

(B) Neither the University nor NTID may withdraw or expend the income of its federal endowment fund for any commercial purpose.

(C) Beginning on October 1, 1992, the University and NTID shall maintain records of the income generated from its respective federal endowment fund for the prior fiscal year.

(3)(A) Except as provided in subparagraph (B) of this paragraph, the University and NTID, respectively, may, on an annual basis, withdraw or expend not more than 50 percent of the income generated from its federal endowment fund from the prior fiscal year.

(B) The Secretary may permit the University or NTID to withdraw or expend a portion of its federal endowment fund corpus or more than 50 percent of the income generated from its federal endowment fund from the prior fiscal year if the institution involved demonstrates, to the Secretary's satisfaction, that such withdrawal or expenditure is necessary because of:

(i) A financial emergency, such as a pending insolvency or temporary liquidity problem;

(ii) A life-threatening situation occasioned by natural disaster or arson; or

(iii) Another unusual occurrence or exigent circumstance.

(e) *Investment and expenditure flexibility.* — The corpus associated with a federal payment (and its nonfederal match) made to the federal endowment fund of the University or NTID shall not be subject to the investment limitations of subsection (c)(1) of this section after 10 fiscal years following the fiscal year in which the funds are matched, and the income generated from such corpus after the tenth fiscal year described in this subsection shall not be subject to such investment limitations or to the withdrawal and expenditure limitations of subsection (d)(3) of this section.

(f) *Recovery of payments.* — After notice and an opportunity for a hearing, the Secretary is authorized to recover any federal payments under this section if the University or NTID:

(1) Makes a withdrawal or expenditure of the corpus or income of its federal endowment fund that is not consistent with this section;

(2) Fails to comply with the investment standards and limitations under this section; or

(3) Fails to account properly to the Secretary concerning the investment of or expenditures from the federal endowment fund corpus or income.

(g) *Definitions.* — As used in this section:

(1) The term "corpus", with respect to a federal endowment fund under this section, means an amount equal to the federal payments to such fund,

amounts contributed to the fund from nonfederal sources, and appreciation from capital gains and reinvestment of income.

(2) The term “federal endowment fund” means a fund, or a tax-exempt foundation, established and maintained pursuant to this section by the University or NTID, as the case may be, for the purpose of generating income for the support of the institution involved.

(3) The term “income”, with respect to a federal endowment fund under this section, means an amount equal to the dividends and interest accruing from investments of the corpus of such fund.

(4) The term “institution involved” means the University or NTID, as the case may be.

(h) *Authorization of appropriations.* —

(1) In the case of the University, there are authorized to be appropriated for the purposes of this section such sums as may be necessary for each of the fiscal years 1993 through 1997.

(2) In the case of NTID, there are authorized to be appropriated for the purposes of this section such sums as may be necessary for each of the fiscal years 1993 through 1997.

(3) Amounts appropriated under paragraph (1) or (2) shall remain available until expended.

(i) *Effective date.* — The provisions of this section shall take effect as if included in this Act as enacted on August 4, 1986.

(Aug. 4, 1986, Pub. L. 99-371, § 207, as added Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 137(2); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(f).)

Section references. — This section is referred to in § 38-2411.01.

Prior Codifications. — 1981 Ed., § 31-1842.7a.

References in text. — “Section 501(f) of the

Internal Revenue Code of 1986”, referred to in (c)(1), is codified at 26 U.S.C. § 501(f).

“This act”, referred to in (i), is Pub. L. 99-371, 100 Stat. 781, August 4, 1986.

§ 38-2402.08. National Technical Institute for the Deaf Endowment Program. [Repealed].

Repealed.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 208, formerly § 408; renumbered Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(b)(6); repealed Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 137(1).)

Prior Codifications. — 1981 Ed., § 31-1842.8.

§ 38-2402.08a. Scholarship program.

(a) *In general.* — The Secretary may make grants to institutions of higher education that have teacher training programs in deaf education or special education for the purpose of providing scholarships to individuals who are deaf for careers in deaf education or special education. Such institutions shall give

priority consideration in the selection of qualified recipients of the scholarships to individuals from underrepresented backgrounds, particularly minority individuals who are deaf and who are underrepresented in the teaching profession. Grants may be used by institutions to assist in covering the cost of courses of training or study for such individuals and for establishing and maintaining fellowships or traineeships with stipends and allowances as may be determined by the Secretary.

(b) *Authorization of appropriations.* — For the purpose of making grants under subsection (a), there are authorized to be appropriated \$2,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1997.

(Aug. 4, 1986, Pub. L. 99-371, § 208, as added Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 138.)

Prior Codifications. — 1981 Ed., § 31-1842.8a.

§ 38-2402.09. Oversight and effect of agreements.

(a) *Oversight activities.* — Nothing in this chapter shall be construed to diminish the oversight activities of the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives with respect to any agreement entered into between the Secretary of Education and Gallaudet University, and the institution of higher education with which the Secretary has an agreement under part B of subchapter I of this chapter.

(b) *Construction of agreements.* — The agreements described in subsection (a) of this section shall continue in effect, to the extent that such agreements are not inconsistent with this chapter.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 209, formerly § 409; renumbered Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(b)(6); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(g).)

Prior Codifications. — 1981 Ed., § 31-1842.9.

§ 38-2402.10. International students.

(a) *Enrollment.* — Effective with new admissions for academic year 1993-1994 and each succeeding academic year, the University (including preparatory, undergraduate, and graduate students) and NTID shall limit the enrollment of international students to approximately 10 percent of the total postsecondary student population enrolled respectively at the University or NTID.

(b) *Tuition surcharge.* — Effective with new admissions, the tuition for postsecondary international students enrolled in the University (including preparatory, undergraduate, and graduate students) or NTID shall include a

surcharge of 75% for the academic year 1993-1994 and 90 percent beginning with the academic year 1994-1995.

(c) *Reduction of surcharge.* — Beginning with the academic year 1993-1994, the University or NTID may reduce the surcharge under subsection (b) of this section to 50% if:

(1) A student described under subsection (b) of this section is from a developing country;

(2) Such student is unable to pay the tuition surcharge under subsection (b) of this section; and

(3) Such student has made a good faith effort to secure aid through such student's government or other sources.

(d) *Definition.* — For purposes of subsection (c), the term "developing country" means a country that has a 1990 per capita income not in excess of \$4,000 in 1990 United States dollars.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 210, formerly § 410, renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 139; Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(h); Apr. 9, 1997, D.C. Law 11-255, § 36, 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 31-1842.10. legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 38-

Legislative history of Law 11-255. — For 2401.04.

§ 38-2402.11. Authorization of appropriations.

(a) *Gallaudet University.* — There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 through 1997 to carry out the provisions of this chapter, relating to:

(1) Gallaudet University;

(2) Kendall Demonstration Elementary School; and

(3) The model secondary school for individuals who are deaf.

(b) *National Technical Institute for the Deaf.* — There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 through 1997 to carry out the provisions of this chapter relating to the National Technical Institute for the Deaf.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 211, formerly § 411; renumbered and amended Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, §§ 101(b)(6), 140, 151(a)(4); Aug. 11, 1993, 107 Stat. 735, Pub. L. 103-73, § 204(i).)

Prior Codifications. — 1981 Ed., § 31-1842.11.

Subchapter III. Repealed Provisions.

§ 38-2411.01. Authority of Gallaudet University. [Repealed].

Repealed.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 111; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(1).)

Prior Codifications. — 1981 Ed., § 31-1841.4.

§ 38-2411.02. Authority of Gallaudet University. [Repealed].

Repealed.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 121; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(1).)

Prior Codifications. — 1981 Ed., § 31-1841.5.

§ 38-2411.03. Agreement with Gallaudet University for model secondary school. [Repealed].

Repealed.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 122; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(1).)

Prior Codifications. — 1981 Ed., § 31-1841.6.

§ 38-2411.04. Commission established. [Repealed].

Repealed.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 301; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(2).)

Prior Codifications. — 1981 Ed., § 31-1843.1.

§ 38-2411.05. Duties of Commission. [Repealed].

Repealed.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 302; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(2).)

Prior Codifications. — 1981 Ed., § 31-1843.2.

§ 38-2411.06. Administrative provisions. [Repealed].

Repealed.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 303; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(2).)

§ 38-2411.07

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Prior Codifications. — 1981 Ed., § 31-1843.3.

§ 38-2411.07. Compensation of members. [Repealed].

Repealed.

(Aug. 4, 1986, 100 Stat. 781, Pub. L. 99-371, § 304; Oct. 1, 1992, 106 Stat. 2151, Pub. L. 102-421, § 101(a)(2).)

Prior Codifications. — 1981 Ed., § 31-1843.4.

§§ 38-2411.08, 38-2411.09.

Renumbered.

CHAPTER 24A. AMERICAN SIGN LANGUAGE RECOGNITION.

Sec.

38-2431. Findings.

38-2432. Definitions.

Sec.

38-2433. American Sign Language instruction.

§ 38-2431. Findings.

(a) American Sign Language (“ASL”) is one of the top 4 widely used languages in the United States and Canada.

(b) The District of Columbia has over 20,000 deaf and hard of hearing residents, many of whom use ASL as their primary language.

(c) ASL has met the accepted linguistic criteria to qualify as a legitimate language in that it has a system of arbitrary symbols, grammatical signals, syntax, has a community of users, and it has undergone historical changes.

(d) Two-thirds of state legislatures in the United States recognize and accept ASL as a bona fide language.

(Oct. 26, 2001, D.C. Law 14-50, § 2, 48 DCR 7952.)

Legislative history of Law 14-50. — Law 14-50, the “American Sign Language Recognition Act of 2001”, was introduced in Council and assigned Bill No. 14-38, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and

second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 26, 2001, it was assigned Act No. 14-129 and transmitted to both Houses of Congress for its review. D.C. Law 14-50 became effective on October 26, 2001.

§ 38-2432. Definitions.

For the purposes of this chapter, the term:

(1) “American Sign Language” or “ASL” means a visual language that is separate and distinct from English and other languages, and uses the hands, arms, facial markers, and body movements to convey grammatical information.

(2) “ASLTA” means the American Sign Language Teachers Association.

(3) “Deaf” means the inability to hear or understand oral communication, with or without the assistance of amplification devices.

(4) “Deaf people” means persons who use ASL as their primary language to communicate.

(5) “Hard of hearing” means permanent hearing loss which is severe enough to necessitate the use of amplification devices to hear oral communication.

(6) “Professional certification” means a teacher has met the ASLTA professional level certification requirements specified in the standards section of the ASLTA Certification Procedures and Standards.

(7) “Provisional certification” means a teacher has met the minimum ASLTA provisional level certification requirements specified in the standards section of the ASLTA Certification Procedures and Standards.

(8) “Qualified certification” means a teacher has met the ASLTA qualified level certification requirements specified in the standards section of the ASLTA Certification Procedures and Standards.

(Oct. 26, 2001, D.C. Law 14-50, § 3, 48 DCR 7952.)

Legislative history of Law 14-50. — For D.C. Law 14-50, see notes following § 38-2431.

§ 38-2433. American Sign Language instruction.

(a) American Sign Language may be offered in elementary and secondary public schools, community colleges, and 4-year universities and colleges, as a modern foreign language for which credit may be given. In secondary public schools, where offered for credit, ASL courses may be taken to satisfy a foreign language requirement.

(b) The minimal requirement of ASL teachers in K-12 schools and 4-year universities and colleges shall be at least a college degree in teaching ASL or a degree in a field related to deaf people with an ASLTA professional level certification. The teacher shall have demonstrated the highest level of knowledge and skills in teaching ASL, including:

- (1) Knowledge of curriculum development;
- (2) Evaluation;
- (3) Linguistics; and
- (4) Theoretical and contemporary issues in the field of ASL.

(c) The minimal requirement of ASL teachers in community colleges or other educational programs shall be at least an ASLTA qualified level certification. The teacher shall have demonstrated proficiency knowledge of second-language teaching methodology, language activities, evaluation, and knowledge of ASL linguistics.

(d) The minimal requirement of ASL teachers in state service providers or agencies shall be at least a ASLTA provisional level certification. The teacher shall have demonstrated proficiency in ASL and basic knowledge about ASL teaching, including developing course outlines and lesson plans.

(e) The requirements of ASLTA certification shall be effective on January 17, 2002.

(f) The ASL curriculum for K-12, L1 users and L2 learners, shall be approved by the ASLTA effective January 1, 2003.

(Oct. 26, 2001, D.C. Law 14-50, § 4, 48 DCR 7952.)

Legislative history of Law 14-50. — For D.C. Law 14-50, see notes following § 38-2431.

SUBTITLE VII. SPECIAL EDUCATION.

CHAPTER 25. SPECIAL EDUCATION AND ASSESSMENT.

Sec.

38-2501. [Repealed].

§ 38-2501. Assessment and placement of special education students [Repealed].

Repealed.

(Mar. 26, 1999, D.C. Law 12-175, § 602, 45 DCR 7193; Oct. 19, 2000, D.C. Law 13-172, § 2712, 47 DCR 6308; Nov. 13, 2003, D.C. Law 15-39, § 342, 50 DCR 5668; Mar. 14, 2007, D.C. Law 16-269, § 201, 54 DCR 841.)

Prior Codifications. — 1981 Ed., § 31-1861.

Temporary Amendment of Section. — Section 2(c) and 3(c) of D.C. Law 13-197 added a sentence to provide, “Further, the District of Columbia Public Schools (DCPS) shall work with the Mayor and Council to resolve any concerns regarding attorney-related costs of special education.”

Section 5(b) of D.C. Laws 13-197 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 14-262 amended section 5(b) of D.C. Law 14-210 by making nonsubstantive changes in pars. (8) and (9); and adding par. (10) to read as follows:

“(10) Two parents of District of Columbia Special Education students.”

Section 4(b) of D.C. Law 14-262 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Sections 2 through 6 of D.C. Law 14-210 added provisions reading as follows:

“Sec. 2. Establishment.

“There is established a Special Education Task Force (“Task Force”) with the purpose of serving as a collaborative body of District agencies that will monitor, support, and implement Special Education reform within the District of Columbia Public Schools.”

“Sec. 3. Functions.

“Specific functions of the Task Force shall include the following:

“(1) Within 60 days of the approval of the Board, adopt by a majority vote, the Special Education Reform Plan developed pursuant to section 4;

“(2) Convene monthly or more frequently as deemed necessary and appropriate by its members to report on the progress, identify obstacles, and recommend amendments to the Reform Plan;

“(3) Identify ways that better coordinate and improve special education service delivery;

“(4) Monitor the Special Education Reform Plan, developed by the Superintendent for the District of Columbia Public Schools and approved by the Board of Education for the District of Columbia, to determine whether its being executed in an appropriate and timely manner; and

“(5) Determine specific savings targets for Fiscal Year 2004 and beyond, including those associated with the Tobacco Settlement funds provided to the District of Columbia Public Schools in Fiscal Year 2003.”

“Sec. 4. Special Education Reform Plan.

“The Superintendent shall develop a Special Education Reform Plan (“Reform Plan”) which shall include the following:

“(1) Measurable goals;

“(2) Time line for deliverables;

“(3) Roles and responsibilities of all District agencies that provide special education related services;

“(4) Proposed legislative amendments;

“(5) Targeted savings activities for fiscal years 2003-2005; and

“(6) Review and input from Task Force members.”

“Sec. 5. Composition of the Task Force.

“(a) The Task Force shall be comprised of the following 9 members, or designees thereof:

“(1) The Mayor of the District of Columbia;

“(2) The Chair of the Committee on Education, Libraries and Recreation for the Council of the District of Columbia;

“(3) The chair of Committee of Finance and Revenue for the Council of the District of Columbia;

“(4) The President of the Board of Education;

“(5) The District of Columbia Public Schools Superintendent;

“(6) The State Education Officer of the District of Columbia;

"(7) The Deputy Mayor for Children, Youth, Families and Elders;

"(8) The Chief Financial Officer for the District of Columbia; and

"(9) The Chief Financial Officer for the District of Columbia Public Schools.

"(b) The following shall serve as advisory, nonvoting members of the Task Force:

"(1) All the members of the Council's Committee on Education, Libraries and Recreation;

"(2) The department head or designee of the Office of Special Education;

"(3) The department head or designee of the Committee on Special Education and Student Services for the Board of Education;

"(4) The department head or designee of the Office of Corporation Counsel;

"(5) The department head or designee of the Department of Mental Health;

"(6) The department head or designee of the Child and Family Services Agency;

"(7) The department head or designee of the Medical Assistance Administration;

"(8) The department head or designee of the Office of Medicaid Public Provider Operation Reform; and

"(9) The representative of the State Advisory Panel on Special Education in the District of Columbia.

"(c) The Task Force shall be co-chaired by the Mayor and the Chair of the Committee on Education, Libraries and Recreation.

"(d) The Director of the State Education Office shall provide staffing for the Task Force."

"Sec. 6. Memorandum of Understanding.

"The voting members of the Task Force shall adopt and sign a Memorandum of Understanding regarding the implementation of the Reform Plan."

Section 8(b) of D.C. Law 14-210 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Assessment and Placement of Special Education Students Emergency Act of 1998 (D.C. Act 12-375, June 5, 1998, 45 DCR 4459).

For temporary (90-day) amendment of section, see § 2714 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 2712, 2722, and 2732 to 2735 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 4(c) of the Redevelopment Land Agency Disposition Review Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-524, January 11, 2001, 48 DCR 624).

For temporary (90 day) amendment of section, see § 2(a) of the Redevelopment Land

Agency Disposition Fiscal Year 2001 Budget Support Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-563, January 31, 2001, 48 DCR 1620).

For temporary (90 day) addition of provisions, see §§ 2 to 6 of Special Education Task Force Emergency Act of 2002 (D.C. Act 14-395, June 25, 2002, 49 DCR 6100).

For temporary (90 day) amendment of section, see § 2 of Special Education Task Force Expansion Emergency Amendment Act of 2002 (D.C. Act 14-541, December 3, 2002, 49 DCR 11660).

For temporary (90 day) provisions affecting this section, see §§ 3352-3356 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) provisions establishing a Special Education Task Force, see § 2 of Special Education Task Force Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-480, October 3, 2002, 49 DCR 9582).

For temporary (90 day) Special Education Task Force provisions, see §§ 2 to 6 of Special Education Task Force Establishment Emergency Act of 2003 (D.C. Act 15-85, May 19, 2003, 50 DCR 4110).

For temporary (90 day) amendment of section, see § 342 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) addition of §§ 38-2551 to 38-2555, see §§ 2 to 6 of Special Education Task Force Establishment Congressional Review Emergency Act of 2003 (D.C. Act 15-129, July 29, 2003, 50 DCR 6840).

For temporary (90 day) amendment of section, see § 342 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) repeal of section, see § 201 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006 (D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 13-172. — Law 13-172, the "Fiscal Year 2001 Budget Support Act of 2000," was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 14-210. — Law 14-210, the “Special Education Task Force Temporary Act of 2002”, was introduced in Council and assigned Bill No. 14-711, and was retained by Council. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 23, 2002, it was assigned Act No. 14-445 and transmitted to both Houses of Congress for its review. D.C. Law 14-210 became effective on October 19, 2002.

Legislative history of Law 14-262. — Law 14-262, the “Special Education Task Force Expansion Temporary Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-944, and was retained by Council. The Bill was adopted on first and second readings on November 7, 2002, and December 3, 2002, respectively. Signed by the Mayor on December 23, 2002, it was assigned Act No. 14-559 and transmitted to both Houses of Congress for its review. D.C. Law 14-262 became effective on March 27, 2003.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Legislative history of Law 16-269. — Law 16-269, the “Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-668, which was referred to Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on October 3, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-625 and transmitted to both Houses of Congress for its review. D.C. Law 16-269 became effective on March

Short title. — Short title of subtitle C of title XXXIV of Law 14-190: Section 3451 of D.C. Law 14-190 provided that subtitle C of title XXXIV of the act may be cited as the Special Education Multiyear Budget Plan Act of 2002.

Short title of subtitle E of title III of Law 15-39: Section 341 of D.C. Law 15-39 provided that subtitle E of title III of the act may be cited as the Special Education Student Assessment, Evaluation, and Placement Amendment Act of 2003.

Editor’s notes. — Application of D.C. Law 12-175: Section 604 of D.C. Law 12-175 provided that the act shall apply upon enactment by the United States Congress of legislation authorizing 120 days for the Board of Education and the District of Columbia Public Schools to assess and place special education students.

Special Education Assessment and Placement Act of 1998: Section 601 of D.C. Law 12-175 provided that title VI of the act may be cited as the “Special Education Assessment and Placement Act of 1998.”

Section 141 of Public Law 106-113 provided: “Notwithstanding any other provision of law, not later than 120 days after the date that a District of Columbia Public Schools (DCPS) student is referred for evaluation or assessment—

“(1) the District of Columbia Board of Education, or its successor, and DCPS shall assess or evaluate a student who may have a disability and who may require special education services; and

“(2) if a student is classified as having a disability, as defined in section 101(a)(1) of the Individuals with Disabilities Education Act (84 Stat. 175; 20 U.S.C. 1401(a)(1)) or in section 7(8) of the Rehabilitation Act of 1973 (87 Stat. 359; 29 U.S.C. 706(8)), the Board and DCPS shall place that student in an appropriate program of special education services.”

Section 2722 of D.C. Law 13-172, as amended by D.C. Law 13-226, § 4(c) and D.C. Law 13-313, § 24, provided:

“It is District of Columbia policy that there shall be no limit on the fee payment for attorneys in special education matters in any way that is different than federal law applying to the 50 states, unless the Mayor, the Council, the Board of Education, and the District of Columbia Financial Responsibility and Management Assistance Authority concur in a Memorandum of Understanding setting forth a rate and amount of compensation; provided, that the District of Columbia Public Schools shall work with the Mayor and Council to resolve any concerns regarding attorney-related costs of special education.”

Establishment—State Advisory Panel on Special Education, see Mayor’s Order 2001-28, February 14, 2001 (48 DCR 2192). Placement in Special Education Services. Section 121 of Pub. L. 107-96 provided:

“Notwithstanding any other provision of law, not later than 120 days after the date that a District of Columbia Public Schools (DCPS) student is referred for evaluation or assessment—

“(1) the District of Columbia Board of Education, or its successor, and DCPS shall assess or evaluate a student who may have a disability and who may require special education services; and

“(2) if a student is classified as having a disability, as defined in section 101(a)(1) of the Individuals with Disabilities Education Act (84 Stat. 175; 20 U.S.C. 1401(a)(1)) or in section 7(8) of the Rehabilitation Act of 1973 (87 Stat. 359; 29 U.S.C. 706(8)), the Board and DCPS

shall place that student in an appropriate program of special education services.”

Payment of Attorney Fees. Section 140(a) of Pub. L. 107-96 provided:

“(a) Notwithstanding 20 U.S.C. 1415, 42 U.S.C. 1988, 29 U.S.C 794a, or any other law, none of the funds appropriated under this Act, or in appropriations Acts for subsequent fiscal years, may be made available to pay attorneys’ fees accrued prior to the effective date of this Act that exceeds a cap imposed on attorneys’ fees by prior appropriations Acts that were in effect during the fiscal year when the work was performed, or when payment was requested for work previously performed, in an action or proceeding brought against the District of Columbia Public Schools under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.)”

Sections 3452 to 3456 of D.C. Law 14-190 provided:

“Sec. 3452. No later than December 31, 2002, Superintendent of the District of Columbia Public Schools shall submit to the Chief Financial Officer of the District of Columbia a multi-year financial plan which details the projected cost of services for the Special Education program for fiscal years 2003 through 2006, and shall be based on a performance plan for the same fiscal years. The multiyear financial plan shall specify reasonable assumptions for inflation, personal service levels, and wage increases, and identify all budgetary assumptions being used. The multiyear financial plan shall calculate and specify the cost per fiscal year to achieve the objectives and goals set forth in the performance plan.

“Sec. 3453. In developing the multiyear financial plan, the Superintendent of the District of Columbia Public Schools shall work as closely as possible with the Special Education Task Force established pursuant to section 2303(b)(5)(A)(ii) of the Tobacco Settlement Trust Fund Establishment Act of 1999, effective October 20, 1999 (D.C. Law 13-38; D.C. Official Code § 7-1811.03(b)(5)(A)(ii).

“Sec. 3454. The Chief Financial Officer shall have the authority to require greater specificity in the multiyear financial plan. When the Chief Financial Officer is satisfied with the quality and detail of the multiyear financial plan, but in any event no later than March 1, 2003, the Superintendent of the District of Columbia

Public Schools shall submit the multiyear financial plan for special education to the Council.

“Sec. 3455. The multi-year financial plan shall include all funds, including local and federal funds.

“Sec. 3456. (a) For the purposes of this subtitle subtitle C of Title XXXIV, §§ 3451 to 3457, of D.C. Law 14-190, ‘performance plan’ is a detailed statement that includes:

“(1) A mission statement —a broad statement of central purpose;

“(2) Objectives —less broad statements of desired outcomes resulting from accomplishing the mission; and

“(3) Goals —target levels of performance expressed in tangible, measurable terms, against which actual achievement of objectives can be compared; a goal may be expressed as a population target, or as a quantitative standard, value, or rate.

“(b) The performance plan shall describe the strategy for how the mission (including its needs assessment goals and service delivery goals and objectives) will be accomplished. This description of strategy shall include all of the functions, activities, operations, and projects required for effective implementation of the performance plan. There shall be one or more measures of performance, that address both quantity and quality, for each goal. The performance plan shall state measurable or objective performance goals and objectives for all significant activities of the agency or program. The plan shall identify (describe and quantify) the classes of persons to be served and how (qualitatively and quantitatively) those classes will change as a result of the mission, objectives, and goals.

“(c) The performance plan shall also provide national norms, industry standards, typical benchmarks, performance measures from other cities, or other relevant comparative data.

“(d) The performance plan shall detail how the agency or program will provide improved service delivery that:

“(1) Fulfills its mission (including objectives and goals);

“(2) Reduces expenditures over the time frame of the plan, especially from local funds; and

“(3) Creates operational efficiencies to accomplish this.”

CHAPTER 25A. SPECIAL EDUCATION TASK FORCE ESTABLISHMENT.

Sec.

38-2551. Establishment.

38-2552. Functions.

38-2553. Special Education Reform Plan.

Sec.

38-2554. Composition of the Task Force.

38-2555. Memorandum of Understanding.

§ 38-2551. Establishment.

There is established a Special Education Task Force ("Task Force") with the purpose of serving as a collaborative body of District agencies that will monitor, support, and implement special education reform within the District of Columbia Public Schools.

(Nov. 13, 2003, D.C. Law 15-39, § 372, 50 DCR 5668.)

Emergency legislation. — For temporary (90 day) addition, see § 2 of Special Education Task Force Establishment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-232, November 25, 2003, 50 DCR 10729).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Short title. — Short title of subtitle H of title III of Law 15-39: Section 371 of D.C. Law 15-39 provided that subtitle H of title III of the act may be cited as the Special Education Task Force Establishment Act of 2003.

§ 38-2552. Functions.

Specific functions of the Task Force shall include the following:

(1) Within 60 days of the approval of the Board of Education, adopt, by a majority vote, the Special Education Reform Plan developed pursuant to § 38-2553;

(2) Convene monthly, or more frequently as deemed necessary and appropriate, to report on the implementation of the Special Education Reform Plan and identify obstacles and recommend amendments to the Special Education Reform Plan;

(3) Identify ways to better coordinate and improve special education service delivery;

(4) Monitor the Special Education Reform to ensure that the Reform Plan is executed in an appropriate and timely manner; and

(5) Determine specific savings targets for Fiscal Year 2004 and beyond, including those associated with the Tobacco Settlement funds provided to the District of Columbia Public Schools in Fiscal Year 2003.

(Nov. 13, 2003, D.C. Law 15-39, § 373, 50 DCR 5668; Apr. 13, 2005, D.C. Law 15-354, § 84(b), 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354, in par. (1), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) addition, see § 3 of Special Education Task Force Establishment Second Congressional

Review Emergency Act of 2003 (D.C. Act 15-232, November 25, 2003, 50 DCR 10729).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 38-101.

§ 38-2553. Special Education Reform Plan.

The Superintendent of Schools shall develop a Special Education Reform Plan ("Reform Plan") which shall include the following:

- (1) Measurable goals;
- (2) Timelines for deliverables;
- (3) Roles and responsibilities of all District agencies that provide special education related services;
- (4) Proposed legislative initiatives;
- (5) Targeted savings activities for fiscal years 2003 through 2005; and
- (6) Continued review and input from Task Force members.

(Nov. 13, 2003, D.C. Law 15-39, § 374, 50 DCR 5668.)

Emergency legislation. — For temporary (90 day) addition, see § 4 of Special Education Task Force Establishment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-232, November 25, 2003, 50 DCR 10729).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

§ 38-2554. Composition of the Task Force.

(a) The Task Force shall be comprised of the following 9 voting members, or designees thereof:

- (1) The Mayor of the District of Columbia;
- (2) The Chair of the Committee on Education, Libraries and Recreation for the Council of the District of Columbia;
- (3) The Chair of the Committee of Finance and Revenue for the Council of the District of Columbia;
- (4) The President of the Board of Education;
- (5) The Superintendent of the District of Columbia Public Schools;
- (6) The State Education Officer of the District of Columbia;
- (7) The Deputy Mayor for Children, Youth, Families and Elders;
- (8) The Chief Financial Officer for the District of Columbia; and
- (9) The Chief Financial Officer for the District of Columbia Public Schools.

(b) The following shall serve as advisory, nonvoting members of the Task Force:

- (1) The members of the Council's Committee on Education, Libraries and Recreation;
- (2) The department head or designee of the Office of Special Education;
- (3) The department head or designee of the Committee on Special Education and Student Services for the Board of Education;
- (4) The Corporation Counsel for the District of Columbia;
- (5) The department head or designee of the Department of Mental Health;
- (6) The department head or designee of the Child and Family Service Agency;
- (7) The department head or designee of the Medical Assistance Administration;
- (8) The department head or designee of the Office of Medicaid Public Provider Operation Reform;

(9) The representative of the State Advisory Panel on Special Education in the District of Columbia; and

(10) Two parents of District of Columbia Special Education students.

(c) The Task Force shall be co-chaired by the Mayor and the Chair of the Committee on Education, Libraries and Recreation for the Council of the District of Columbia.

(d) The Director of the State Education Office shall provide staffing for the Task Force.

(Nov. 13, 2003, D.C. Law 15-39, § 375, 50 DCR 5668.)

Emergency legislation. — For temporary (90 day) addition, see § 5 of Special Education Task Force Establishment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-232, November 25, 2003, 50 DCR 10729).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

§ 38-2555. Memorandum of Understanding.

(a) The voting members of the Task Force shall adopt and sign a Memorandum of Understanding regarding the implementation of the Reform Plan, which shall be submitted to the Council.

(b) This chapter shall expire upon the submission of the Memorandum of Understanding to the Council pursuant to subsection (a) of this section.

(Nov. 13, 2003, D.C. Law 15-39, § 376, 50 DCR 5668.)

Emergency legislation. — For temporary (90 day) addition, see § 6 of Special Education Task Force Establishment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-232, November 25, 2003, 50 DCR 10729).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

CHAPTER 25B. PLACEMENT OF STUDENTS WITH DISABILITIES IN
NONPUBLIC SCHOOLS.

Sec.	Sec.
38-2561.01. Definitions.	38-2561.07. Certificate of Approval for nonpublic special education schools or Programs — General.
38-2561.02. Assessment and placement of a students with a disability — General.	38-2561.08. Certificate of Approval — Compliance.
38-2561.03. Placement and funding of a student with a disability in a nonpublic special education school or program.	38-2561.09. Certificate of Approval — Inspection.
38-2561.04. Funding of a placement of a student with disabilities in a nonpublic special education school or program made by other District of Columbia government agencies.	38-2561.10. Certificate of Approval — Renewal.
38-2561.05. Resolution of assessment, evaluation, placement, and funding disputes.	38-2561.11. Certificate of Approval — Denial, revocation, refusal to renew, or suspension.
38-2561.06. Participation of DCPS in development or review of the IEP.	38-2561.12. Rate-setting for nonpublic schools.
	38-2561.13. Rate-setting for nonpublic schools — Reconsideration.
	38-2561.14. Rate Reconsideration Panel.
	38-2561.15. Rules.
	38-2561.16. Reporting requirements.

§ 38-2561.01. Definitions.

For the purposes of this chapter, the term:

(1) “Aversive intervention” means specific strategies for behavioral-treatment intervention, including:

- (A) Noxious, painful, intrusive stimuli or activities that result in pain;
- (B) Any form of noxious, painful, or intrusive spray or inhalant;
- (C) Electric shock or use of a graduated electronic decelerator;
- (D) Pinches and deep muscle squeezes;
- (E) Withholding adequate sleep, shelter, clothing, bedding, or bathroom facilities;

(F) Withholding meals, essential nutrition, or hydration, or intentionally altering staple food or drink to make it distasteful; or

(G) The use of chemical restraints, instead of positive programs or medical treatments.

(1A) “Certificate of Approval” means the document issued by the SEA to the legal authority responsible for governing and operating a nonpublic special education school or program upon determination that the nonpublic special education school or program is in compliance with the requirements of § 38-2561.07.

(2) “DCPS” means the public local education system under the control of the Board of Education. The term “DCPS” does not include public charter schools.

(3) “Free appropriate public education” means special education and related services that:

(A) Have been provided at public expense, under public supervision and direction, and without charge;

(B) Meet the standards of the State Education Agency;

(C) Include an appropriate preschool, elementary school, or secondary school education; and

(D) Are provided in conformity with the individualized education plan.

(4) “IDEA” means the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 et seq.), and its implementing regulations.

(5) “Individualized education plan” or “IEP” means a written plan that specifies the special education programs and services to be provided to meet the unique educational needs of a student with a disability, as required under section 614(d) of the IDEA [20 U.S.C. § 1414(d)].

(6) “Least restrictive environment” means a placement of a student with a disability that:

(A) Provides the special education needed by the student;

(B) Provides for the education of the student, to the maximum extent appropriate, with other students who do not have disabilities;

(C) Is based upon consideration of the proximity of the placement to the student’s place of residence; and

(D) Is in accordance with section 612(a)(5)(A) of the IDEA [20 U.S.C. § 1412(a)(5)(A)].

(7)(A) “Nonpublic special education school or program” means a privately owned or operated preschool, school, educational organization, or program, no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition, to students with disabilities.

(B) The term “nonpublic special education school or program” shall not include a privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even though the school may serve students with disabilities in a regular academic setting.

(8) “Panel” means the Rate Reconsideration Panel established by § 38-2561.14.

(9) “Rates” are the annual or per-diem costs paid to each nonpublic special education school or program, for tuition and for each unit of related service delivered.

(10) “Related services” shall have the same meaning as provided in section 602(26) of the IDEA [20 U.S.C. § 1401(26)].

(11) “Residential child care facility” means a program that provides care for children 24 hours a day with a structured set of services and activities designed to achieve objectives related to the needs of the children served.

(12) “Special education” shall have the same meaning as provided in section 602(29) of the IDEA [20 U.S.C. § 1401(29)].

(13) “State education agency” or “SEA” means the Office of the State Superintendent of Education, or any successor agency that has primary responsibility for the state-level supervisory functions for special education that are typically handled by a state department of education or public instruction, a state board of education, a state education commission, or a state education authority.

(14) “Student with a disability” means a student determined to have:

(A) Autism;

- (B) Deaf-blindness;
- (C) A developmental delay;
- (D) A hearing impairment, including deafness;
- (E) Mental retardation;
- (F) Multiple disabilities;
- (G) An orthopedic impairment or other health impairment;
- (H) An emotional disturbance;
- (I) A severe disability;
- (J) A specific learning disability;
- (K) A speech or language impairment;
- (L) A traumatic brain injury;
- (M) A visual impairment, including blindness; or
- (N) Any other condition, disability, or impairment described in section

602(3) of the IDEA [20 U.S.C. § 1401(3)], or in section 7(8) of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 359; 29 U.S.C. § 706(8)) [repealed, see now 29 U.S.C. § 705(20)].

(Mar. 14, 2007, D.C. Law 16-269, § 101, 54 DCR 841; Mar. 20, 2009, D.C. Law 17-304, § 2(a), 55 DCR 12806.)

Effect of amendments. — D.C. Law 17-304 redesignated former par. (1) as par. (1A); added par. (1); and, in par. (13), substituted “Office of the State Superintendent of Education,” for “District of Columbia Public Schools.”

Emergency legislation. — For temporary (90 day) addition, see § 101 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006 (D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — Law 16-269, the “Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-668, which was referred to Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on October 3, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-625 and transmitted to both Houses of Congress for its review. D.C. Law 16-269 became effective on March 14, 2007.

Legislative history of Law 17-304. — Law 17-304, the “Protection of Students with Dis-

abilities Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-654 which was referred to the Committee of the Whole The Bill was adopted on first and second readings on October 7, 2008, and November 18, 2008, respectively. Signed by the Mayor on December 9, 2008, it was assigned Act No. 17-592 and transmitted to both Houses of Congress for its review. D.C. Law 17-304 became effective on March 20, 2009.

References in text. — Section 614(d) of the IDEA, referred to in par. (5), is classified to 20 U.S.C. § 1414(d).

Section 612(a)(5)(A) of the IDEA, referred to in par. (6)(D), is classified to 20 U.S.C. § 1412(a)(5)(A).

Section 602(26) of the IDEA, referred to in par. (10), is classified to 20 U.S.C. § 1401(26).

Section 602(29) of the IDEA, referred to in par. (12), is classified to 20 U.S.C. § 1401(29).

Delegation of Authority. — Delegation of Authority to the District of Columbia Deputy Mayor for Education to Appoint Special Education Rate Reconsideration Panel Members, see Mayor’s Order 2011-173, October 14, 2011 (58 DCR 9081).

§ 38-2561.02. Assessment and placement of a students with a disability — General.

(a) DCPS shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment.

(b) DCPS shall place a student with a disability in an appropriate special education school or program in accordance with this chapter and the IDEA.

(c) Special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this chapter:

- (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;
- (2) Private or residential District of Columbia facilities; and
- (3) Facilities outside of the District of Columbia.

(Mar. 14, 2007, D.C. Law 16-269, § 102, 54 DCR 841; Mar. 25, 2009, D.C. Law 17-353, § 195, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

Emergency legislation. — For temporary (90 day) addition, see § 102 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006

(D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

CASE NOTES

ANALYSIS

Attorney fees.
Child Find duties.
In general.
Multi-disciplinary team meeting.
Prevailing party.

Attorney fees.

Given that school district was already obligated to provide evaluation for disabled student within 120 days of referral and to place student in appropriate special education school or program under District of Columbia law, hearing officer's order requiring school district to place student in particular school did not materially change legal relationship between parties, and therefore parent was not "prevailing party" in due process hearing, as required for award of attorney fees under Individuals with Disabilities Education Act (IDEA), particularly given concerns about parent's intent in filing due process complaint merely three days after formally requesting individualized education program (IEP) hearing for student. *Bush ex rel. A.H. v. District of Columbia*, 579 F.Supp.2d 22, 2008 U.S. Dist. LEXIS 75433 (2008).

Child Find duties.

District of Columbia, Chancellor of District of Columbia Public Schools (DCPS), and District Superintendent of Education failed to comply with their "Child Find" duties to disabled students in violation of IDEA, at least through and including the year 2007; their attempts to find disabled children in the District through public awareness, outreach, and even direct referrals were inadequate, they actually failed to find

these disabled children, proven by the large number of children to whom defendants denied a free appropriate public education (FAPE), and defendants' initial evaluations were inadequate, proven by low number of 65.80% of children that received timely evaluation and by U.S. Office of Special Education Programs' (OSEP's) annual determinations that District did not meet requirement for timely evaluations. *DL v. District of Columbia*, 730 F.Supp.2d 84, 2010 U.S. Dist. LEXIS 80829 (2010), vacated by, remanded by 2013 U.S. App. LEXIS 7375 (D.C. Cir. Apr. 12, 2013).

In general.

Hearing officer's decision to defer to completion of 120-day statutory assessment process for determining child's eligibility, developing individualized education program (IEP), and determining placement, in denying parents' request for private school tuition reimbursement for initial months of school year was appropriate, particularly where parents' delay in notifying child's new school district of her enrollment insured a completion date of the 120-day statutory assessment period over two months into the school year. *Dorros v. District of Columbia*, 510 F.Supp.2d 97, 2007 U.S. Dist. LEXIS 70076 (2007).

Multi-disciplinary team meeting.

Under Individuals with Disabilities Education Act (IDEA) and District of Columbia law, parent's administrative action alleging that District of Columbia and chancellor of District of Columbia Public Schools failed to hold multi-disciplinary team (MDT) meeting to evaluate and determine appropriate placement for her child was premature, since it was filed 25 days

after parent requested MDT meeting. Jones v. District of Columbia, 646 F.Supp.2d 62, 2009 U.S. Dist. LEXIS 73579 (2009).

Prevailing party.

Hearing officer's order requiring school district to complete evaluations of student and convene individualized education program (IEP) meeting approximately 30 days earlier than statutory deadline did not materially alter

parties' legal relationship, such that parent was not "prevailing party" at due process hearing for purposes of her attorney fee request under Individuals with Disabilities Education Act (IDEA), when school district was still within compliance window provided by statute. Bush ex rel. Bush ex rel. A.H. v. District of Columbia, 579 F.Supp.2d 22, 2008 U.S. Dist. LEXIS 75433 (2008).

§ 38-2561.03. Placement and funding of a student with a disability in a nonpublic special education school or program.

(a) DCPS shall be responsible for the placement and funding of a student with a disability in a nonpublic special education school or program when:

(1) DCPS cannot implement the student's IEP or provide an appropriate placement in conformity with DCPS rules, the IDEA, and any other applicable laws or regulations; and

(2) The nonpublic special education school or program to which the student has been referred:

(A) Has been approved by the SEA in accordance with § 38-2561.07;

(B) Can implement the student's IEP; and

(C) Represents the least restrictive environment for the student.

(b)(1) Unless the placement of a student has been ordered by a District of Columbia court, federal court, or a hearing officer pursuant to IDEA, no student whose education, including special education or related services, is funded by the District of Columbia government shall be placed in a nonpublic special education school or program that:

(A) Allows the use of aversive intervention in its policy or practice; or

(B) Has not received and maintained a valid Certificate of Approval from the SEA in accordance with § 38-2561.07.

(2) A hearing officer may make a placement in a nonpublic special education school or program that lacks a valid Certificate of Approval from the SEA only if the hearing officer has determined that:

(A) There is no public school or program able to provide the student with a free appropriate public education; and

(B) There is no nonpublic special education school or program with a valid Certificate of Approval that meets the requirements of subsection (a)(2) of this section.

(c) In conformity with the IDEA, DCPS is not responsible for paying the cost of education, including special education and related services, of a student with a disability who attends a nonpublic special education school or program if:

(1) DCPS made a free appropriate public education available to the student; and

(2) The student's parent or guardian elected to place the student in a nonpublic special education school or program.

(d) If the SEA has reason to believe that a child is a neglected child or is being abused, as those terms are defined in § 16-2301(9) and (23), respectively,

in an out-of-state nonpublic special education school or program, the SEA shall immediately notify the relevant state's child welfare agency and the parent or guardian of the child. Upon notification, and with parental or guardian consent, the SEA shall work with the parent or guardian to take immediate steps to ensure the safety and health of the child.

(Mar. 14, 2007, D.C. Law 16-269, § 103, 54 DCR 841; Mar. 20, 2009, D.C. Law 17-304, § 2(b), 55 DCR 12806.)

Effect of amendments. — D.C. Law 17-304 rewrote subsec. (b)(1) and added subsec. (d). Prior to amendment, subsec. (b)(1) read as follows: “(b)(1) No student with a disability whose education, including special education and related services, is funded by the District government shall be placed in a nonpublic special education school or program that has not received and maintained a valid Certificate of Approval from the SEA in accordance with § 38-2561.07, unless the placement has been ordered by a District of Columbia court, a

federal court, or a hearing officer pursuant to the IDEA.”

Emergency legislation. — For temporary (90 day) addition, see § 103 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006 (D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

Legislative history of Law 17-304. — For Law 17-304, see notes following § 38-2561.01.

§ 38-2561.04. Funding of a placement of a student with disabilities in a nonpublic special education school or program made by other District of Columbia government agencies.

(a) If another District of Columbia government agency places a student with a disability in a nonpublic special education school or program, DCPS shall fund the placement unless and until the other agency agrees to fund the placement.

(b) The District of Columbia shall comply with section 612(a)(12) of the IDEA [20 U.S.C. § 1412(a)(12)] and 34 C.F.R. § 300.154 by developing appropriate mechanisms for interagency coordination between DCPS and other District government agencies to ensure that all necessary services are provided and funded by the appropriate agency.

(c) Nothing in this section shall be construed as removing DCPS's liability for providing and paying for special education and related services if another public agency fails to provide or pay for them.

(Mar. 14, 2007, D.C. Law 16-269, § 104, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 104 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006 (D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

References in text. — Section 612(a)(12) of the IDEA, referred to in subsec. (b), is classified to 20 U.S.C. § 1412(a)(12).

§ 38-2561.05. Resolution of assessment, evaluation, placement, and funding disputes.

(a) The due process procedures set forth in Chapter 30 of Title 5 of the

District of Columbia Municipal Regulations and the IDEA shall govern any disputes between a student's parent or guardian and DCPS regarding the assessment, evaluation, placement, and funding of a student with a disability in a nonpublic special education school or program.

(b) In conformity with the IDEA, DCPS may not terminate funding for the last approved nonpublic placement of a student while an administrative or judicial review of a recommended placement is pending.

(Mar. 14, 2007, D.C. Law 16-269, § 105, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 105 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006

(D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

§ 38-2561.06. Participation of DCPS in development or review of the IEP.

When a student is receiving education and related services from a nonpublic special education school or program that is approved by the SEA under § 38-2561.07 and receives funding from the District of Columbia government, DCPS shall participate in the initial meeting to develop an IEP. For any subsequent meeting to review or revise the IEP, the failure or inability of a DCPS representative to attend the IEP meeting after the meeting has been set shall not prevent the meeting from taking place as planned.

(Mar. 14, 2007, D.C. Law 16-269, § 106, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 106 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006

(D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

§ 38-2561.07. Certificate of Approval for nonpublic special education schools or Programs — General.

(a) The SEA shall develop and administer a Certificate of Approval process for nonpublic special education schools or programs that serve District of Columbia students with disabilities with funding from the District of Columbia government by January 1, 2009. The Certificate of Approval process shall include an evaluation of the nonpublic special education school or program, including an onsite inspection of the operations and facilities of the school or program. The SEA shall issue a Certificate of Approval to a nonpublic special education school or program after determining that:

(1) The school or program complies with the regulations set forth in Chapters 22, 25, 30, and 38 of Title 5 of the District of Columbia Municipal Regulations, the requirements of this chapter, and any applicable fire safety, building code, health, and sanitation requirements;

(2) The types of care being provided by the school or program are consistent with the applicable laws and regulations of the District of Columbia; and

(3) The school or program prohibits by policy and practice aversive intervention.

(b) Any nonpublic special education school or program that will be affected by the Certificate of Approval process shall be allowed to participate in the development and revision of applicable standards pursuant to the IDEA.

(c) A Certificate of Approval shall be for a period not to exceed 3 years.

(d) The SEA shall develop and maintain a list of approved nonpublic special education schools and programs, and shall display this list along with appropriate information about each nonpublic special education school or program on the Internet site of the District of Columbia Public Schools.

(e) The initial application and the Certificate of Approval shall include the following information:

(1) Name of the school or program;

(2) Location of the school or program;

(3) The name and address of the individual or entity responsible for governing and operating the school or program;

(4) The classification of the educational school or program to include, but not be limited to, one or more of the following:

(A) Nursery school;

(B) Kindergarten;

(C) Elementary school with sequential grades specified;

(D) Secondary school with sequential grades specified; and

(E) Special education and related services; and

(5) Any additional information the SEA requires.

(f) A school or program shall operate in a manner that is consistent with the specifications recorded on the Certificate of Approval issued to the individual or entity with legal responsibility for governing and operating the school or program.

(g) The SEA may issue a provisional Certificate of Approval to schools or programs that meet minimum requirements to be established by SEA regulations.

(h) Repealed.

(i) In issuing Certificates of Approval to residential child care facilities, or when otherwise required, the SEA shall coordinate with the Department of Mental Health, the Department of Human Services, the Child and Family Services Agency, the Department of Youth Rehabilitation Services, and the Medical Assistance Administration of the Department of Health, or any other appropriate public agency.

(Mar. 14, 2007, D.C. Law 16-269, § 107, 54 DCR 841; Mar. 20, 2009, D.C. Law 17-304, § 2(c), 55 DCR 12806.)

Effect of amendments. — D.C. Law 17-304 rewrote subsec. (a) and repealed subsec. (h).

Emergency legislation. — For temporary (90 day) addition, see § 107 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006

(D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

Legislative history of Law 17-304. — For Law 17-304, see notes following § 38-2561.01.

§ 38-2561.08. **Certificate of Approval — Compliance.**

(a) All nonpublic special education schools or programs serving students with disabilities with funding provided by the District of Columbia government shall come into full compliance with this chapter by August 15, 2007, for the 2007-2008 academic school year.

(b) To continue receiving funding from the District of Columbia government in the 2007-2008 academic school year, all nonpublic special education schools or programs shall submit an initial application for a Certificate of Approval to the SEA no later than 90 days after March 14, 2007.

(c) For the 2008-2009 academic school year and each subsequent school year, a nonpublic special education school or program seeking a Certificate of Approval shall submit an initial application to the SEA no later than 45 days prior to the start of the school year.

(d) Not later than 45 days prior to the start of each school year, a school or program granted a Certificate of Approval by the SEA shall certify its annual compliance with this chapter, and regulations issued pursuant to this chapter, by filing a certificate of compliance with the SEA.

(Mar. 14, 2007, D.C. Law 16-269, § 108, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 108 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006

(D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

§ 38-2561.09. **Certificate of Approval — Inspection.**

(a) The SEA shall schedule periodic monitoring visits to each nonpublic special education school or program at least once every 3 years. The employees of the SEA may make unannounced visits to a school or program during the 3-year period.

(b) A nonpublic special education school or program approved by the SEA shall be subject to inspection by the SEA or its designee for the following reasons:

(1) To verify compliance with this chapter and its implementing regulations for the purpose of reviewing an application for a Certificate of Approval;

(2) To verify compliance with this chapter and its implementing regulations when a nonpublic special education school or program receives District of Columbia government funds for its educational program;

(3) To investigate complaints relating to this chapter or violations of the IDEA; and

(4) To determine compliance with DCPS regulations or to monitor program quality.

(Mar. 14, 2007, D.C. Law 16-269, § 109, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 109 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006

(D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

§ 38-2561.10. Certificate of Approval — Renewal.

(a) Nonpublic schools and programs for special education students may have their Certificates of Approval renewed for a period not to exceed 3 years.

(b) If a Certificate of Approval has not been renewed by the SEA on or before the renewal anniversary date, the Certificate of Approval shall expire and the DCPS Superintendent of Schools shall take immediate steps to determine an appropriate placement, in accordance with the IDEA, to any DCPS-funded students who attended the nonpublic special education school or program with the expired Certificate of Approval.

(Mar. 14, 2007, D.C. Law 16-269, § 110, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 110 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006 (D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

§ 38-2561.11. Certificate of Approval — Denial, revocation, refusal to renew, or suspension.

(a) The SEA may deny, revoke, refuse to renew, or suspend a Certificate of Approval for any one or combination of the following causes:

(1) Violating any provision of this chapter, applicable rules of the SEA or DCPS, or applicable federal laws or regulations, except that noncompliance with § 38-2561.12 shall not be grounds for denial, revocation, refusal to renew, or suspension;

(2) Providing false, misleading, or incomplete information, or failing to provide information requested by the SEA or DCPS;

(3) Violating any commitment made in an application for a Certificate of Approval;

(4) Failing to provide or maintain the premises or equipment of the special education school or program in a safe and sanitary condition as required by applicable law or regulation;

(5) Failing to maintain adequate programs or to retain adequate, qualified instructional staff;

(6) Failing within a reasonable time to provide information requested by DCPS or the SEA as a result of a formal or informal complaint, or as a supplement to an initial application for a Certificate of Approval; and

(7) Allowing aversive intervention in its policy or practice.

(b)(1) If the SEA determines a nonpublic special education school or program is in violation of subsection (a) of this section, the SEA shall provide the nonpublic special education school or program written notice of the violations before denying, revoking, refusing to renew, or suspending the Certificate of Approval.

(2)(A) Except as provided in subparagraph (B) of this paragraph, a nonpublic special education school or program determined to be in violation of subsection (a) of this section may request a hearing before an independent panel of the SEA. The request shall be in writing and submitted to the SEA

within 30 days of receipt of the written notice required under paragraph (1) of this subsection. The panel that reviews the SEA decision shall not contain any individual who participated in the decision to issue the original notice.

(B) A nonpublic special education school or program determined to be in violation of subsection (a)(7) of this section may request a hearing before an independent panel of the SEA. The request shall be in writing and submitted to the SEA within 10 days of receipt of the written notice required under paragraph (1) of this subsection. The panel that reviews the SEA decision shall not contain any individual who participated in the decision to issue the original notice.

(3)(A) Except as provided in subparagraph (B) of this paragraph, the SEA shall hold a hearing within 30 days of receiving a written request, and shall issue its decision no later than 10 days after the hearing. The decision of the SEA panel shall be final and not appealable.

(B) If the notice of violation is due to a violation of subsection (a)(7) of this section, the SEA shall hold a hearing within 15 days of receiving a written request, and shall issue its decision no later than 10 days after the hearing. The decision of the SEA panel shall be final and not appealable.

(4) Pursuant to the IDEA, while review is pending, the nonpublic special education school or program shall continue to provide special education and related services to enrolled students.

(c) The Mayor shall conduct a study of how to improve the process of appealing the SEA's decision to deny, revoke, refuse to renew, or suspend a Certificate of Approval. The study shall include the options of review of SEA decisions by the Office of Administrative Hearings or the courts. The Mayor shall provide a report to the Council, including recommendations for legislative and operations changes, by January 1, 2009.

(Mar. 14, 2007, D.C. Law 16-269, § 111, 54 DCR 841; Mar. 20, 2009, D.C. Law 17-304, § 2(d), 55 DCR 12806.)

Effect of amendments. — D.C. Law 17-304, in subsec. (a), deleted “and” from the end of par. (5), substituted “; and” for a period at the end of par. (6), and added par. (7); in subsecs. (b)(2) and (3), designated subpar. (A) and inserted “Except as provided in subparagraph (B) of this paragraph,” and added subpar. (B).

Emergency legislation. — For temporary (90 day) addition, see § 111 of Placement of

Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006 (D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

Legislative history of Law 17-304. — For Law 17-304, see notes following § 38-2561.01.

§ 38-2561.12. Rate-setting for nonpublic schools.

(a) The Mayor, or his or her designee, shall administer and implement a rate-setting process for the payment of tuition and related services to nonpublic special education schools and programs that provide special education and related services to students with disabilities funded by the District of Columbia.

(b) In establishing fair and reasonable rates, the Mayor, or his or her designee, shall consider a variety of factors, including historical data, the rates established by surrounding jurisdictions, and administrative costs.

(c) The Mayor, or his or her designee, may adopt the rates established by surrounding jurisdictions and apply those rates to nonpublic special education schools or programs that have already been approved to provide services with public funds by a surrounding jurisdiction.

(d) A nonpublic special education school or program serving students who are funded by the District government shall enter into a contract with the District government accepting rates set by the Mayor, or his or her designee, except that a contract is not required for a student whose placement has been ordered by a District of Columbia court, a federal court, or a hearing officer pursuant to the IDEA.

(Mar. 14, 2007, D.C. Law 16-269, § 112, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 112 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006 (D.C. Act 16-667, December 28, 2006, 54 DCR 1134).
Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

§ 38-2561.13. Rate-setting for nonpublic schools — Reconsideration.

(a) A nonpublic special education school or program may request reconsideration of a rate approved by the Mayor, or his or her designee, by the Rate Reconsideration Panel established by § 38-2561.14. A rate is eligible for reconsideration only for matters that relate to the ability of the nonpublic special education school or program to meet the requirements of an IEP for a student placed by a District government agency.

(b) The opportunity to request rate reconsideration shall apply only to an aggregate rate for students funded by the District government and the rate may not be reconsidered for individual students, except that the Panel may make case-by-case exceptions for a student the Panel determines has unique or highly specialized needs that cannot be properly addressed and funded through an aggregate rate.

(c) A request for reconsideration shall be filed within 30 days of the nonpublic special education school or program's notification of rates from the Mayor, or his or her designee. The reconsideration request shall include the relief requested, the basis for the relief, and sufficient and appropriate information to allow an analysis of the claim.

(d) The decision of the Panel is final and binding.

(Mar. 14, 2007, D.C. Law 16-269, § 113, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 113 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006 (D.C. Act 16-667, December 28, 2006, 54 DCR 1134).
Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

§ 38-2561.14. Rate Reconsideration Panel.

(a) A Rate Reconsideration Panel shall be established to review requests for rate reconsideration. The Panel shall be comprised of the following individuals:

- (1) One individual designated by the Superintendent of Schools;
 - (2) One individual designated by the State Education Officer;
 - (3) One individual designated by the Chief Financial Officer;
 - (4) One individual designated by the Director of the Department of Health;
 - (5) Two parents of students with disabilities, designated by the Mayor; and
 - (6) One representative of a nonpublic special education school or program serving students from the District of Columbia, designated by the Mayor.
- (b) The members of the Panel shall elect the Chairman of the Panel.
 - (c) The presence of at least 4 members of the Panel shall constitute a quorum necessary for the Panel to conduct official business.
 - (d) The representative of the nonpublic special education school or program shall recuse himself or herself from any cases involving his or her school or program.

(Mar. 14, 2007, D.C. Law 16-269, § 114, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 114 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006

(D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

§ 38-2561.15. Rules.

- (a) Not later than 90 days after March 14, 2007, the Mayor shall issue regulations to implement the powers and duties assigned to the Mayor by this chapter.
- (b) Not later than 90 days after March 14, 2007, DCPS shall issue regulations to implement its powers and duties pursuant to this chapter.

(Mar. 14, 2007, D.C. Law 16-269, § 115, 54 DCR 841.)

Emergency legislation. — For temporary (90 day) addition, see § 115 of Placement of Students with Disabilities in Nonpublic Schools Emergency Amendment Act of 2006 (D.C. Act 16-667, December 28, 2006, 54 DCR 1134).

Legislative history of Law 16-269. — For Law 16-269, see notes following § 38-2561.01.

Delegation of Authority. — Delegation of

Rule Making Authority to the District of Columbia State Superintendent of Education to Establish Rate Setting Rules for Nonpublic Schools as Required by the “Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006”, effective March 14, 2007, D.C. Law 16-269, 54 DCR 841, see Mayor’s order 2007-149, June 28, 2007 (54 DCR 9604).

§ 38-2561.16. Reporting requirements.

- (a) The SEA shall report to the Council annually, on or before the 1st day of the school year, for each nonpublic special education school or program:
 - (1) The name and location of each nonpublic special education school or program issued or denied a Certificate of Approval by the SEA, including the status of each;
 - (2) The number of children assigned to each school or program;
 - (3) Any enforcement action that has been taken with respect to the license, Certificate of Approval, or charter of the school or program;

(4) Any action the school or program has taken, or is taking, with respect to an enforcement action;

(5) All incident reports, including any report of abuse, neglect, or use of aversive intervention regarding any student placed by the SEA;

(6) Any investigation taken by the school or program as a result of an incident, including:

(A) The time it took to complete the investigation;

(B) Whether the parents or guardian of the student and the SEA have been informed of the report; and

(C) The progress and outcomes of the investigation, including any action taken by the facility; provided, that the information shall not be reported in a manner that violates any applicable provision of federal, state, or local law relating to the privacy of student information.

(b) The report shall be made available to the public on the SEA and DCPS Internet sites.

(Mar. 14, 2007, D.C. Law 16-269, § 116, as added Mar. 20, 2009, D.C. Law 17-304, § 2(e), 55 DCR 12806.)

Legislative history of Law 17-304. — For Law 17-304, see notes following § 38-2561.01.

SUBTITLE VIII. STATE LEVEL AGENCIES.

CHAPTER 26. OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION.

Sec.	Sec.
38-2601. Establishment of the Office of the State Superintendent of Education.	38-2605.01. Transition plan for transfer of state-level functions.
38-2601.01. Duties.	38-2606. Existing state agency responsibilities.
38-2602. Responsibilities.	38-2607. Education Licensure Commission Site Evaluation Fund.
38-2602.01. Transfer of state-level functions from the Board of Education.	38-2608. Supervision of adult education program.
38-2603. Requirements for short-term SEO plan.	38-2609. Development of the educational data warehouse system.
38-2604. Short-term SEO plan.	
38-2605. Study, recommendations, and transition plan on the additional responsibilities for the SEO.	

§ 38-2601. Establishment of the Office of the State Superintendent of Education.

(a) There is established, under the Office of the Mayor, an Office of the State Superintendent of Education ("OSSE").

(b) The OSSE shall be headed by a State Superintendent of Education ("State Superintendent"), who shall be appointed by the Mayor with the advice and consent of the Council in accordance with § 1-523.01(a). The Officer shall serve a 4-year term.

(c) The State Superintendent shall serve as the chief state school officer for the District of Columbia and shall represent the OSSE and the District of Columbia in all matters before the United States Department of Education and with other states and educational organizations.

(d) All operational authority for state-level functions, except that delegated to the State Board of Education in § 38-2652, shall vest in the Office of the State Superintendent of Education under the supervision of the State Superintendent of Education.

(Oct. 21, 2000, D.C. Law 13-176, § 2, 47 DCR 6835; June 12, 2007, D.C. Law 17-9, § 302(a), 54 DCR 4102.)

Effect of amendments. — D.C. Law 17-9 rewrote the section.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2602 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) transfer to the State Education Office of all positions, personnel, property, records and unexpended balances of funds made available to the Office of Postsecondary Education, Research and Assistance and Tuition Assistance Program, see § 402 of Fiscal Year 2002 Budget Support Emergency

Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) transfer to the State Education Office of appropriations, allocations, and other funds made available to the State Education Agency—Adult Education through the University of the District of Columbia, see § 602 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) additions, see §§ 4111, 4171 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) additions, see §§ 4111, 4171 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 13-176. — Law 13-176, the “State Education Office Establishment Act of 2000,” was introduced in Council and assigned Bill No. 13-416, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 6, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 26, 2000, it was assigned Act No. 13-187 and transmitted to both Houses of Congress for its review. D.C. Law 13-176 became effective on October 21, 2000.

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-103.

Short title. — Short title: Section 4110 of D.C. Law 18-111 provided that subtitle L of title IV of the act may be cited as the “Accuracy in Public Education Projections Act of 2009”.

Short title: Section 4170 of D.C. Law 18-111 provided that subtitle R of title IV of the act may be cited as the “Child Care Services Act of 2009”.

Mayor’s Orders. — Office of the State Superintendent of Education Fleet Management and Vehicle Operators Accountability Policies, see Mayor’s Order 2011-46, February 23, 2011 (58 DCR 1663).

Editor’s notes. — Sections 402 and 602 of D.C. Law 14-28 provided:

“Sec. 402. (a) All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available to the Office of Postsecondary Education, Research and Assistance and Tuition Assistance Program are hereby transferred to the State Education Office, established by section 2(a) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; 47 DCR 6835), effective July 2000.

“(b) All of the functions assigned and authority delegated to the Office of Postsecondary Education, Research and Assistance and Tuition Assistance Program are hereby transferred to the State Education Office, established by D.C. Law 13-176, effective July

Section 4111 of D.C. Law 18-111 provided: “The Office of the State Superintendent, with the participation of the Council, District of Columbia Public Schools, and the Public Charter School Board shall convene a working group that shall develop a uniform method by which enrollment projections will be completed for both public schools and the public charter schools based on empirical and objective data. The methodology shall be developed by a third party that shall be independent of the government of the District of Columbia. The enrollment projections shall include demographic analysis and necessary programmatic factors upon which future budgets shall be based, beginning with the fiscal year 2011 budget.”

Section 4171 of D.C. Law 18-111 provided:

“(a) The Office of the State Superintendent of Education (“OSSE”) shall continue to provide through the Department of Parks and Recreation direct child care programs, including daycare and early and after school care services at all recreation-based sites, including all sites in the Request for Offers (OPM-RFO-OUT-2009-2) issued by the Office of Property Management, unless a contract for a licensed provider to provide those same services has been executed by the District and, if required by section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), approved by the Council.

“(b) The OSSE shall provide to the Council a comprehensive analysis and plan for child care programs for special needs and developmentally disabled children in fiscal year 2010 by November 15, 2009.” Office of the State Superintendent of Education Fleet Management and Vehicle Operators Accountability Policies, see Mayor’s Order 2011-46, February 23, 2011 (58 DCR 1663).

§ 38-2601.01. Duties.

The Office of the State Superintendent of Education shall serve as the state education agency and perform the functions of a state education agency for the District of Columbia under applicable federal law, including grant-making, oversight, and state educational agency functions for standards, assessments, and federal accountability requirements for elementary and secondary education.

(Oct. 21, 2000, D.C. Law 13-176, § 2a, as added June 12, 2007, D.C. Law 17-9, § 302(b), 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-131.

Editor's notes. — Applicability: Section 305 of Law 17-9 provided that this title shall apply upon Congressional enactment of Title IX and

inclusion of its effect in an approved budget and financial plan. Congress enacted the provisions of Title IX in Pub. L. 110-33, approved June 1, 2007.

§ 38-2602. Responsibilities.

(a) Within one year of the Officer's appointment, but not later than October 2001, and except as provided in § 38-2604, the OSSE shall assume the responsibilities listed in subsection (b) of this section. The transfer and assumption of responsibilities shall take place in accordance with the short-term plan to be submitted by the Officer to the Mayor for approval by February 15, 2001, or 5 weeks from the establishment of the OSSE, whichever is later.

(b) The OSSE shall:

(1) Have authority for all state functions for federally sponsored child nutrition programs in the District, including those sponsored by the United States Department of Agriculture;

(2) Verify annual fall enrollment counts for all public and public charter schools pursuant to § 38-1804.02 and § 38-159;

(3) Formulate and promulgate rules for the documentation and verification of District residency for public and public charter school students, pursuant to §§ 38-302 and 38-303;

(4) Make recommendations to the Mayor and Council for periodic revisions to the Uniform Per Student Funding Formula pursuant to § 38-2911, and provide information and data related to such revisions including the study of actual costs of education in the District of Columbia, consideration of performance incentives created by the formula in practice, research in education and education finance, and public comment;

(5) Conduct a study to be submitted to the Mayor and Council recommending additional functions to be assumed by the OSSE and a proposed transition plan meeting the specifications of § 38-2605;

(6) Oversee the functions and activities of the Education Licensure Commission, established by § 38-1303;

(6A) Establish and administer licensure requirements for pre-kindergarten programs, pursuant to § 38-271.02(a)(3);

(7) Issue rules to establish requirements to govern acceptable credit to be granted for studies completed at independent, private, public, public charter schools, and private instruction;

(8) Prescribe minimum amounts of instructional time for all schools, including public, public charter, and private schools;

(8A) Prescribe standards for extended learning time beyond the regular school day for public schools, including public charter schools;

(9) Oversee the state-level functions and activities related to early childhood education programs, including the public education of the Early Intervention Services Program, in accordance with § 7-863.02;

(9A) Administer pre-kindergarten education, in accordance with § 38-271.02;

(9B) Conduct a residency audit, annually, to establish the number of

in-District and out-of-District children enrolled in pre-kindergarten pursuant to Chapter 2A of this title [§ 38-271.01 et seq.];

(10) Provide for the education of children in the custody of the Department of Youth Rehabilitation Services;

(11) Formulate and promulgate rules necessary to carry out its functions, including rules governing the process for review and approval of state-level policies by the State Board of Education under § 38-2652, pursuant to of Chapter 5 of Title 2;

(12) Develop and adopt policies that come within the functions of state educational agencies under federal law, subject to the approval of the State Board of Education for those policies that are subject to board approval under § 38-2652;

(13) Conduct studies and pilot projects to develop, review, or test state policy;

(14) Repealed;

(15) Fulfill any other responsibilities consistent with the performance of the state-level education functions of the District of Columbia;

(16) Promulgate rules for the administration and implementation of the uniform per student funding formula, pursuant to Chapter 29 of this title;

(17) Have the authority to collect and dedicate fees for state academic credential certifications and general educational development testing as well as for any other state-level education function, as established by the Superintendent by regulation;

(18) Have the authority to issue grants, from funds under its administration (including the non-public tuition paper agency), to local education agencies ("LEAs") for programs that increase the capacity of the LEA to provide special education services; and

(19) By October 1, 2013, create a truancy prevention resource guide for parents and legal guardians who have children who attend a District public school, which shall be updated and made available upon request and, at minimum, include:

(A) An explanation of the District's laws and regulations related to absenteeism and truancy;

(B) Information on:

(i) What a parent or legal guardian can do to prevent truancy;

(ii) The common causes of truancy; and

(iii) Common consequences of truancy;

(C) A comprehensive list of resources that are available to a parent or legal guardian, and the student, that address the common causes of truancy and the prevention of it, such as:

(i) Hotlines that provide assistance to parents, legal guardians, and youth;

(ii) Counseling for the parent (or legal guardian) or the youth, or both;

(iii) Parenting classes;

(iv) Parent-support groups;

(v) Family psycho-education programs;

(vi) Parent-resource libraries;

- (vii) Risk prevention education;
- (viii) Neighborhood family support organizations and collaboratives that provide assistance to families experiencing hardship;
- (ix) Behavioral health resources and programs in schools;
- (x) The Behavioral Health Ombudsman Program; and
- (xi) The resources at each public school for at-risk students and their parents or legal guardians.

(c)(1) There is established as a nonlapsing fund the Academic Certification and Testing Fund ("Fund"). All fees collected by the Office of the State Superintendent of Education for state academic credential certifications, general educational development testing, or any other state-level education function established pursuant to subsection (b)(17) of this section shall be deposited into the Fund.

(2) All funds deposited into the Fund, and any interest earned on those funds, shall be used for the purposes set forth in paragraph (3) of this subsection. Any unexpended funds in the Academic Certification and Testing Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(3) The Fund shall be administered by the State Superintendent of Education and shall be used to support the administration of state academic credential certifications, General Educational Development, and other state-level programs.

(Oct. 21, 2000, D.C. Law 13-176, § 3, 47 DCR 6835; Nov. 13, 2003, D.C. Law 15-39, § 302, 50 DCR 5668; Oct. 20, 2005, D.C. Law 16-33, § 4003(a), 52 DCR 7503; June 12, 2007, D.C. Law 17-9, § 302(c), 54 DCR 4102; Sept. 18, 2007, D.C. Law 17-20, § 4012(a), 54 DCR 7052; July 18, 2008, D.C. Law 17-202, § 607, 55 DCR 6297; Aug. 16, 2008, D.C. Law 17-219, § 4008, 55 DCR 7598; Mar. 25, 2009, D.C. Law 17-353, § 215(d), 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, § 4031, 57 DCR 181; Apr. 8, 2011, D.C. Law 18-370, § 404, 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 9057, 58 DCR 6226; June 7, 2012, D.C. Law 19-141, § 303, 59 DCR 3083.)

Effect of amendments. — D.C. Law 15-39, in subsec. (b), made nonsubstantive changes in pars. (4) and (5), and added par. (6)

D.C. Law 16-33, in subsec. (b)(6), substituted "Education" for "Educational".

D.C. Law 17-9, in subsec. (b), inserted pars. (7) to (15).

D.C. Law 17-20, in subsec. (b), deleted "and" from the end of par. (14), substituted "; and" for a period at the end of par. (15), and added par. (16).

D.C. Law 17-202, in subssecs. (a) and (b), substituted "OSSE" for "SEO"; and added subssecs. (b)(6A), (9A), and (9B).

D.C. Law 17-219, in subsec. (b), deleted "and" from the end of par. (15), substituted a semicolon for a period at the end of par. (16), and added par. (17); and added subsec. (c).

D.C. Law 17-353 validated previously made

technical corrections in subssecs. (b)(14), (15), (16).

D.C. Law 18-111 repealed subsec. (b)(14), which had read as follows: "(14) Provide staff support to the State Board of Education to enable it to perform its functions as enumerated in § 38-2652;".

D.C. Law 18-370 added subssecs. (b)(8A) and (18); in subsec. (b)(16), deleted "and" from the end; and, in subsec. (b)(17), substituted "; and" for a period at the end.

D.C. Law 19-21, in subsec. (c)(2), substituted "be used for the purposes set forth in paragraph (3) of this subsection. Any unexpended funds in the Academic Certification and Testing Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia." for "not revert to the unrestricted fund balance of the General

Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in paragraph (3) of this subsection without regard to fiscal year limitation, subject to authorization by Congress.”.

D.C. Law 19-141, in subsec. (b), deleted “and” from the end of par. (17), substituted “; and” for a period the end of par. (18), and added par. (19).

Emergency legislation. — For temporary (90 day) amendment of section, see § 302 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 302 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 4003(a) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 4012(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 4031 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 4031 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 404 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 13-176. — For Law 13-176, see notes following § 38-2601.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-131.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 17-202. — For Law 17-202, see notes following § 38-202.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 38-821.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

Legislative history of Law 19-141. — For history of Law 19-141, see notes under § 38-203.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

Short title. — Short title of subtitle A of title III of Law 15-39: Section 301 of D.C. Law 15-39 provided that subtitle A of title III of the act may be cited as the Transfer of the Educational Licensure Commission Amendment Act of 2003.

Short title: Section 4011 of D.C. Law 17-20 provided that subtitle B of title IV of the act may be cited as the “Office of the State Superintendent of Education Special Education Supplemental Funding and Educational Data Warehouse Amendment Act of 2007”.

Short title: Section 4007 of D.C. Law 17-219 provided that subtitle D of title IV of the act may be cited as the “State Education Office Establishment Amendment Act of 2008”.

Short title: Section 4030 of D.C. Law 18-111 provided that subtitle D of title IV of the act may be cited as the “State Board of Education Clarification Amendment Act of 2009”.

Editor’s notes. — Section 405 of D.C. Law 18-370 provided: “Sec. 405. Applicability. This subtitle shall apply as of October 1, 2010. ”

§ 38-2602.01. Transfer of state-level functions from the Board of Education.

(a) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the District of Columbia Board of Education that support state-level functions related to state education agency responsibilities and all powers, duties, and functions delegated to the District of Columbia Board of Education concerning the establishment, development, and institution of state-level functions related to state education agency responsibilities identified in § 38-2602 are transferred to the Office of the State Superintendent of Education.

(b) The transfer described in subsection (a) of this section shall be in accordance with § 38-2606.

(Oct. 21, 2000, D.C. Law 13-176, § 3a, as added June 12, 2007, D.C. Law 17-9, § 302(d), 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-131.

Editor's notes. — Applicability: Section 305 of Law 17-9 provided that this title shall apply upon Congressional enactment of Title IX and

inclusion of its effect in an approved budget and financial plan. Congress enacted the provisions of Title IX in Pub. L. 110-33, approved June 1, 2007.

§ 38-2603. Requirements for short-term SEO plan.

The short-term SEO plan shall:

(1) Be formulated in consultation with the Board of Education, the Superintendent of Schools, the Public Charter School Board, District agencies with responsibilities for functions specified in § 38-2602, the District of Columbia Financial Responsibility and Management Assistance Authority ("DCFRMAA") and any relevant federal agencies;

(2) Be adopted by the Officer only after at least one public hearing on the proposed short-term plan;

(3) Identify the authority and responsibility of each party at each stage in the transition process;

(4) Specify dates and benchmarks for transfer of authority, responsibility, budget, and employees;

(5) Specify the estimated cost to the SEO of carrying out each function specified in § 38-2602, and the recommended source of revenues; and

(6) Identify any factors with potential for disrupting services to students and recommend steps to prevent any possible disruption.

(Oct. 21, 2000, D.C. Law 13-176, § 4, 47 DCR 6835.)

Legislative history of Law 13-176. — For Law 13-176, see notes following § 38-2601.

§ 38-2604. Short-term SEO plan.

(a) Subject to the SEO's determination that adequate funds and staffing are available to ensure a successful transfer, and that the assumption of authority conforms with all pertinent requirements of federal law, the short-term plan shall include the following timelines:

(1) With regard to federally sponsored summer feeding programs, the plan shall provide for SEO assumption of functions sufficiently in advance to make the SEO fully responsible for the summer 2001 program.

(2) With regard to fall enrollment verification, the plan shall provide for SEO assumption of full authority no later than July 1, 2001, or on such date as the DCFRMAA shall relinquish to the SEO its authority pursuant to § 38-1804.02.

(3) With regard to documentation and verification of student residency in

the District, the plan shall provide for SEO assumption of full authority no later than April 1, 2001.

(4) With regard to recommendations for revisions in the Uniform Per Student Funding Formula, the plan shall provide for submission by the SEO to the Mayor and Council no later than September 30, 2001.

(b) If at the time of proposed transfer under the short-term plan the SEO is for any reason unable to assume full responsibility for all functions to be transferred, such functions shall continue to be performed by the agency or body currently carrying them out.

(Oct. 21, 2000, D.C. Law 13-176, § 5, 47 DCR 6835.)

Legislative history of Law 13-176. — For Law 13-176, see notes following § 38-2601.

§ 38-2605. Study, recommendations, and transition plan on the additional responsibilities for the SEO.

(a)(1) Not later than July 1, 2001, the SEO shall submit recommendations to the Mayor and the Council, based on a study of the additional responsibilities that should be assumed by the SEO, and a transitional plan for each responsibility.

(2) The study, recommendations, and transition plan shall be developed, in consultation with the Board of Education, the Superintendent of Public Schools, the Public Charter School Board, and any other District agencies which currently has the responsibility for functions listed in subsection (b) of this section.

(b) In formulating recommendations, the Officer shall consider the advantages of giving the SEO responsibility for the:

(1) State-level responsibilities associated with the acquisition and administration of federal grants on behalf of funding or services for all eligible District schools including public, public charter and private schools, and District of Columbia public institutions for post secondary education, including preparation of state plans, applications for competitive grants, setting of state-wide standards and assessment, allocation of federal funds among eligible schools, monitoring of compliance with federal requirements, and submission of reports;

(2) Issuance of rules to establish requirements to govern acceptable credit to be granted for studies completed at independent, private, public and public charter schools and private instruction, pursuant to § 38-202;

(3) Issuance of rules regarding enforcement of school attendance requirements for all schools, including public, public charter and private schools, pursuant to § 38-203;

(4) Conduct of the census of all minors 3 years of age or older who are residents of the District, pursuant to § 38-204;

(5) Establishment of criteria for individuals to obtain high school equivalency credentials, administration of appropriate exams and issuance of such credentials;

(6) Issuance of work permits for minors who reside in the District, pursuant to § 32-208;

(7) Establishment of annual standardized reporting requirements for statistical information from public and public charter schools;

(8) Fact-finding, research and investigative activities on behalf of the Mayor, Council and other public officials;

(9) Establishment of teacher certification requirements for all eligible District schools including public, public charter, private schools, and District of Columbia public institutions for post secondary education; and

(10) Establishment of licensing procedures and standards for instructional staff for all eligible District schools including public, public charter, private schools, and District of Columbia public institutions for post secondary education.

(c) The study shall consider whether the SEO's assumption of each responsibility would:

(1) Improve the quality of educational and other services to children and adults;

(2) Eliminate or create duplication of functions by various District agencies;

(3) Reduce or enlarge multiple reporting requirements upon school authorities, including the Board of Education, Superintendent of Schools, Public School Charter Board, and individual schools;

(4) Eliminate conflicts of interest; and

(5) Entail additional costs for the District.

(d) The transition plan shall:

(1) Identify the authority and responsibility of each party at each stage in the transition process;

(2) Specify dates and benchmarks for transfer of authority, responsibility, budget, and employees;

(3) Specify the estimated cost to the SEO of carrying out each function studied, and the recommended source of revenues; and

(4) Identify any factors with potential for disrupting services to students and recommend steps to prevent such disruption.

(Oct. 21, 2000, D.C. Law 13-176, § 6, 47 DCR 6835.)

Legislative history of Law 13-176. — For Law 13-176, see notes following § 38-2601.

§ 38-2605.01. Transition plan for transfer of state-level functions.

(a) Within 90 days of June 12, 2007, the Office of the State Superintendent of Education shall submit to the Mayor for approval a detailed transition plan, in accordance with § 38-2606, for implementation of the transfers set forth in §§ 7-863.03a, 38-2601(d), 38-2602.01, and 38-2608, which shall begin within 30 days of approval; provided, that prior to completion and submission of the plan, the Mayor shall give notice of the contemplated action and an opportunity for a hearing for public comment on the plan, which shall:

(1) Be formulated in consultation with the Board of Education, the District of Columbia Public Schools, the Public Charter School Board, the Washington Teachers Union, and with any relevant District and federal agencies;

(2) Identify the authority and responsibility of each entity at each stage in the transition process;

(3) Specify time lines, dates, and benchmarks for completion of the transfer;

(4) Provide an estimate of the cost to the OSSE of carrying out each transferred function; and

(5) Identify any factors with potential for disrupting services to students and recommend steps to prevent any possible disruption.

(b) The Mayor shall forward the approved transition plan to the Council and the State Board of Education for review.

(Oct. 21, 2000, D.C. Law 13-176, § 6a, as added June 12, 2007, D.C. Law 17-9, § 302(e), 54 DCR 4102.)

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-131.

Editor's notes. — Applicability: Section 305 of Law 17-9 provided that this title shall apply upon Congressional enactment of Title IX and

inclusion of its effect in an approved budget and financial plan. Congress enacted the provisions of Title IX in Pub. L. 110-33, approved June 1, 2007.

§ 38-2606. Existing state agency responsibilities.

All District agencies, including the District of Columbia Public School system, currently performing state-level functions related to public education shall continue to perform such functions until such date as those functions are transferred away from them pursuant to approved transition plans. The Mayor and Council shall provide such funds as are necessary to enable such agencies to continue to perform such functions.

(Oct. 21, 2000, D.C. Law 13-176, § 7, 47 DCR 6835.)

Legislative history of Law 13-176. — For Law 13-176, see notes following § 38-2601.

§ 38-2607. Education Licensure Commission Site Evaluation Fund.

(a) There is established a lapsing fund to be designated as the Education Licensure Commission Site Evaluation Fund ("Fund"), which shall be a segregated account within the General Fund of the District of Columbia, administered by the Office of the State Superintendent of Education, and used for the purposes set forth in subsection (b) of this section.

(b) The Fund shall be used only to cover costs associated with the Education Licensure Commission's review of institutions for licensing purposes under § 38-1306.

(c) All revenues collected by the Education Licensure Commission for evaluations and observations done pursuant to § 38-1306 shall be deposited

into the Fund. All funds deposited into the Fund shall be used for the purposes set forth in subsection (b) of this section. Any unexpended funds in the Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(Oct. 21, 2000, D.C. Law 13-176, § 7a, as added Oct. 20, 2005, D.C. Law 16-33, § 4003(b), 52 DCR 7503; June 12, 2007, D.C. Law 17-9, § 302(f), 54 DCR 4102; Sept. 14, 2011, D.C. Law 19-21, § 9059, 58 DCR 6226.)

Effect of amendments. — D.C. Law 17-9, in subsec. (a), substituted “Office of the State Superintendent of Education” for “State Education Office”.

D.C. Law 19-21, in subsec. (a), substituted “lapsing” for “nonlapsing”; and, in subsec. (c), substituted “be used for the purposes set forth in subsection (b) of this section. Any unexpended funds in the Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.” for “not revert to the fund balance of the General Fund of the District of Columbia at the end of any fiscal year or at any other time,

but shall be continually available for the uses and purposes set forth in subsection (b) of this section, subject to authorization by Congress”.

Emergency legislation. — For temporary (90 day) addition, see § 4003(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-131.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

§ 38-2608. Supervision of adult education program.

(a) The OSSE shall be the state agency responsible for supervision of adult education and adult literacy.

(b) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the University of the District of Columbia that support state-level functions related to adult education or adult literacy and all of the powers, duties, and functions delegated to the University of the District of Columbia concerning the establishment, development, and institution of state-level functions related to adult education or adult literacy are transferred to the OSSE.

(c) The transfer described in subsection (b) of this section shall be in accordance with section 7.

(d) The Office of the State Superintendent of Education shall apply for federal funds as provided in the Adult Education Act, approved April 28, 1988 (102 Stat. 302; 20 U.S.C. § 1201 et seq.).

(e)(1) Notwithstanding any other provision of law, the OSSE is authorized to establish fee rates for all adult education courses. The amount to be charged to each adult shall be fixed annually by the OSSE, which shall be the amount necessary to cover the expense of instruction, cost of textbooks and school supplies, and other operating costs associated with each course offered; provided, that the amount fixed is in accordance with § 2-505. Following the adoption of the fee rates, the OSSE shall transmit a copy of the fee schedule to the Mayor and the Council.

(2) All amounts received by the OSSE pursuant to this subsection shall be paid to the District of Columbia Treasurer and deposited in the General Fund of the District of Columbia in a segregated account to be available as a revenue

source for the OSSE to fund select adult education courses for which fees will be charged.

(3) Waivers, in whole or in part, of fees for select adult education courses may be granted by the OSSE.

(f) OSSE shall provide funding for all costs associated with the 24-hour vocational education programs at Phelps Architecture, Construction and Engineering High School ("Phelps"), Academy for Construction and Design at Cardozo Senior High School ("Cardozo"), and the Hospitality Public Charter School at Roosevelt High School; provided, that a portion of this funding shall be used to employ 2 career technical educators at Cardozo and Phelps.

(Oct. 21, 2000, D.C. Law 13-176, § 7b, as added June 12, 2007, D.C. Law 17-9, § 302(g), 54 DCR 4102; Sept. 14, 2011, D.C. Law 19-21, § 2023, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21 added subsec. (f).

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-131.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

Short title. — Short title: Section 4051 of D.C. Law 19-21 provided that subtitle F of title IV of the act may be cited as "Adult Literacy Reporting Act of 2011".

Editor's notes. — Applicability: Section 305 of Law 17-9 provided that this title shall apply upon Congressional enactment of Title IX and inclusion of its effect in an approved budget and financial plan. Congress enacted the provisions of Title IX in Pub. L. 110-33, approved June 1, 2007.

Section 4052 of D.C. Law 19-21 provided:

"Sec. 4052. Adult literacy reporting.

"(a) The Office of the Deputy Mayor for Education shall report to the Mayor and the Council, on an annual basis on or before the start of the third quarter of fiscal years 2012 through 2016, on the capacity of District-funded service providers to meet the need and demand for adult literacy services in the District. The report shall:

"(1) Cover the current and the preceding fiscal year;

"(2) Identify the office's metrics used for measuring the need and demand for adult literacy

support, state the office's quality standards, and measure the performance of District-funded providers of adult literacy services;

"(3) Provide an accounting of the total number of adults needing literacy support in the District and by ward;

"(4) Provide an accounting of the total number of District-funded providers of adult literacy support services that provide services to District residents, broken down by ward;

"(5) Provide an accounting of the total number of openings available for literacy support services from District-funded service providers during the fiscal year reported, broken down by ward and by service provider;

"(6) Provide a gap analysis that measures the capacity of District-funded service providers to meet the need and demand for adult literacy services in the District and by ward; and

"(7) Propose an adult literacy plan for the next fiscal year to ensure that District-funded programs are meeting the needs of adult learners District-wide and by ward.

"(b) To prepare for the adult literacy report, the Office of the Deputy Mayor for Education, shall seek information and support for the development of quality standards and performance measures from community-based providers of adult education and family literacy services, adult learners, funders, District and federal agencies, representatives from the business community, and adult education experts."

§ 38-2609. Development of the educational data warehouse system.

(a) The OSSE, in coordination with the Office of the Chief Technology Officer, shall develop and implement a longitudinal educational data warehouse system ("EDW system") to be used by:

(1) The OSSE;

(2) The University of the District of Columbia;

(3) Public schools;

- (4) Public charter schools;
- (5) Publicly funded educational programs;
- (6) Policymakers;
- (7) Institutions of higher education; and
- (8) Researchers.

(b) The EDW system shall be used to compile, analyze, research, and organize student, teacher, and school-level data to:

- (1) Facilitate compliance with District of Columbia and federal reporting requirements;
- (2) Aid in local and state-level policymaking and programming; and
- (3) Improve information exchanges, while maintaining the confidentiality of individual student and staff data, in accordance with District of Columbia and federal confidentiality laws, rules, and regulations.

(c)(1) The EDW system shall be designed to allow for compatibility with other data systems that currently exist or that are in development in the District of Columbia.

(2)(A) Upon the request of the State Superintendent, necessary data pertaining to students, teachers, and school levels shall be submitted to the OSSE for the purpose of constructing, updating, or maintaining the EDW system by:

- (i) The University of the District of Columbia;
- (ii) A public school;
- (iii) A public charter school; or
- (iv) An entity administering a publicly funded educational program.

(B) The requested data shall be submitted within a reasonable time, as determined by the OSSE, following a request, and in a standardized format to be established by the OSSE.

(d)(1) All providers of public education in the District of Columbia shall participate in the EDW system, including:

- (A) The University of the District of Columbia;
- (B) Public schools;
- (C) Public charter schools; and
- (D) Entities operating publicly funded educational programs.

(2) The OSSE shall ensure that technical assistance and training is provided to the staff participating in the EDW system.

(e)(1) The OSSE shall ensure that a unique identifier is assigned to every student and teacher in a:

- (A) Public school;
- (B) Public charter school; or
- (C) A publicly funded educational program.

(2) The OSSE shall ensure that a unique identifier is assigned to every student of the University of the District of Columbia.

(3) A unique identifier shall be assigned to a student the first time that the student receives educational services from a provider of public education in the District of Columbia.

(Oct. 21, 2000, D.C. Law 13-176, § 7c, as added Sept. 18, 2007, D.C. Law 17-20, § 4012(b), 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 4012(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

CHAPTER 26A. STATE BOARD OF EDUCATION.

Sec.

38-2651. State Board of Education; establishment; membership.

Sec.

38-2652. Functions of the Board.

§ 38-2651. State Board of Education; establishment; membership.

(a)(1) There is established a State Board of Education ("Board") consisting of 9 members. Four members shall be appointed by the Mayor and confirmed by the Council. Five members shall be elected. Four of the 5 elected members shall be elected from the 4 school districts created pursuant to subsection (c) of this section. One member shall be elected at-large as the President of the Board.

(2) Upon the repeal of §§ 1-204.52 and 1-204.95, the members of the Board of Education established pursuant to § 1-204.95 shall serve as the initial State Board of Education established by this chapter until noon, January 2, 2009.

(b) Beginning at 12:01 p.m. on January 2, 2009, the Board shall consist of 9 elected members. One member shall be elected from each of the 8 school election wards created pursuant to § 1-1011.01 and one member shall be elected at-large. The Board shall select its president from among the 9 members of the Board.

(c) The 4 school districts for the election of Board members, as described in subsection (a)(1) of this section, shall be comprised of the 8 election wards created pursuant to § 1-1011.01:

- (1) Wards 1 and 2 shall comprise School District I;
- (2) Wards 3 and 4 shall comprise School District II;
- (3) Wards 5 and 6 shall comprise School District III; and
- (4) Wards 7 and 8 shall comprise School District IV.

(d)(1) Except as provided in paragraph (3)(B) of this subsection, the term of office of a member of the Board, including the at-large member, shall be 4 years.

(2) Members may receive compensation at a rate fixed by the Council, which shall not exceed the amount provided for in § 1-611.10.

(3)(A) The term of office of a member elected in a general election shall commence at 12:01 p.m. on January 2 of the year following the election. The term of office of an incumbent member shall expire at noon, January 2 of the year following the general election.

(B) The initial terms of the members of the Board elected in the general election in November 2008 shall be as follows:

(i) The 4 members elected from Wards 1, 3, 5, and 6 shall serve 2-year terms, ending at noon, January 2, 2011.

(ii) The 4 members elected from Wards 2, 4, 7, and 8 and the member elected at-large shall serve 4-year terms, ending at noon, January 2, 2013.

(e)(1) Each member of the Board, including the at-large member, shall:

(A) Be a qualified elector, as that term is defined in § 1-1001.02, in the school election ward from which he seeks election;

(B) Have resided in the ward from which he or she is nominated for one year immediately preceding the election;

(C) Not hold another elective office, other than delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice-President of the United States; or

(D) Not be an officer or employee of the District of Columbia government or of the Board.

(2) A member shall forfeit his or her office upon failure to maintain the requirements of this subsection.

(f) The election of the members of the Board shall be conducted on a nonpartisan basis and in accordance with subchapter I of Chapter 10 of Title 1 [§ 1-1001.01 et seq.].

(g) If a member of the Board dies, resigns, or otherwise becomes unable to serve or a member-elect fails to take office, the vacancy shall be filled as provided in § 1-1001.10(e) and (g).

(June 12, 2007, D.C. Law 17-9, § 402, 54 DCR 4102.)

Legislative history of Law 17-9. — Law 17-9, the “Public Education Reform Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-1, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on April 23, 2007, it was assigned

Act No. 17-38 and transmitted to both Houses of Congress for its review. D.C. Law 17-9 became effective on June 12, 2007.

Editor’s notes. — Applicability: Section 404 of Law 17-9 provided that this title shall apply upon Congressional enactment of Title IX. Congress enacted the provisions of Title IX in Pub. L. 110-33, approved June 1, 2007.

§ 38-2652. Functions of the Board.

(a) The Board shall:

(1) Advise the State Superintendent of Education on educational matters, including:

(A) State standards;

(B) State policies, including those governing special, academic, vocational, charter, and other schools;

(C) State objectives; and

(D) State regulations proposed by the Mayor or the State Superintendent of Education;

(2) Approve state academic standards, following a recommendation by the State Superintendent of Education, ensuring that the standards recommended by the State Superintendent of Education:

(A) Specify what children are expected to know and be able to do;

(B) Contain coherent and rigorous content;

(C) Encourage the teaching of advanced skills; and

(D) Are updated on a regular basis;

(3) Approve high school graduation requirements;

(4) Approve standards for high school equivalence credentials;

(5) Approve a state definition of:

(A) “Adequate yearly progress” that will be applied consistently to all local education agencies;

(B) And standards for “highly qualified teachers,” pursuant to the No Child Left Behind Act of 2001, approved January 8, 2002 (115 Stat. 1425; 20 U.S.C. § 6301 et seq.) (“NCLB Act”); and

(C) “Proficiency” that ensures an accurate measure of student achievement;

(6) Approve standards for accreditation and certification of teacher preparation programs of colleges and universities;

(7) Approve the state accountability plan for the District of Columbia developed by the chief state school officer, pursuant to the NCLB Act, ensuring that:

(A) The plan includes a single statewide accountability system that will ensure all local education agencies make adequate yearly progress; and

(B) The statewide accountability system included in the plan is based on academic standards, academic assessments, a standardized system of accountability across all local education agencies, and a system of sanctions and rewards that will be used to hold local education agencies accountable for student achievement;

(8) Approve state policies for parental involvement;

(9) Approve state policies for supplemental education service providers operating in the District to ensure that providers have a demonstrated record of effectiveness and offer services that promote challenging academic achievement standards and that improve student achievement;

(10) Approve the rules for residency verification;

(11) Approve the list of charter school accreditation organizations;

(12) Approve the categories and format of the annual report card, pursuant to NCLB Act;

(13) Approve the list of private placement accreditation organizations, pursuant to Chapter 29 of this title [§ 38-2901 et seq.];

(14) Approve state rules for enforcing school attendance requirements; and

(15) Approve state standards for home schooling.

(b) The Board shall conduct monthly meetings to receive citizen input with respect to issues properly before it, which may be conducted at a location in a ward.

(c) The Board shall consider matters for policy approval upon submission of a request for policy action by the State Superintendent of Education within a review period requested by the Office of the State Superintendent of Education.

(d) The Mayor shall, by order, specify the Board’s organizational structure, staff, budget, operations, reimbursement of expenses policy, and other matters affecting the Board’s functions; provided, that the Board shall be allocated 3 full-time equivalent staff members to perform administrative functions from within the Office of the State Superintendent of Education. These individuals shall be selected by the Board from a list of at least 3 qualified individuals per position produced by the State Superintendent. The individuals selected and serving shall not be removed except with the approval of both the Board and the State Superintendent.

(e) For the purposes of this section, the term “state” means District-wide and similar to functions, policies, and rules performed by states on a state-wide basis.

(June 12, 2007, D.C. Law 17-9, § 403, 54 DCR 4102; Mar. 3, 2010, D.C. Law 18-111, § 4032, 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 rewrote subsec. (d), which had read as follows: “(d) The Mayor shall, by order, specify the Board’s organizational structure, staff, budget, operations, reimbursement of expenses policy, and other matters affecting the Board’s functions.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 4032 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of sec-

tion, see § 4032 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-2651.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

Mayor’s Orders. — Establishment of the State Board of Education’s By laws, see Mayor’s Order 2007-214, October 3, 2007 (55 DCR 139).

SUBTITLE IX. COLLEGE ACCESS ASSISTANCE.

CHAPTER 27. COLLEGE ACCESS ASSISTANCE.

Sec.

38-2701. Purpose.

38-2702. Public school program.

38-2703. Assistance to the University of the
District of Columbia.

38-2704. Private school program.

Sec.

38-2705. General requirements.

38-2706. Limit on aggregate amount of federal
funds for public school and private
school programs.

§ 38-2701. Purpose.

It is the purpose of this chapter to establish a program that enables college-bound residents of the District of Columbia to have greater choices among institutions of higher education.

(Nov. 12, 1999, 113 Stat. 1323, Pub. L. 106-98, § 2.)

§ 38-2702. Public school program.

(a) *Grants.* —

(1) *In general.* — From amounts appropriated under subsection (i) of this section the Mayor shall award grants to eligible institutions that enroll eligible students to pay the difference between the tuition and fees charged for in-State students and the tuition and fees charged for out-of-State students on behalf of each eligible student enrolled in the eligible institution.

(2) *Maximum student amounts.* — An eligible student shall have paid on the student's behalf under this section:

(A) Not more than \$10,000 for any 1 award year (as defined in section 481 of the Higher Education Act of 1965 (20 U.S.C. § 1088)); and

(B) A total of not more than \$50,000.

(3) *Proration.* — The Mayor shall prorate payments under this section for students who attend an eligible institution on less than a full-time basis.

(b) *Reduction for insufficient appropriations.* —

(1) *In general.* — If the funds appropriated pursuant to subsection (i) of this section for any fiscal year are insufficient to award a grant in the amount determined under subsection (a) of this section on behalf of each eligible student enrolled in an eligible institution, then the Mayor shall:

(A) First, ratably reduce the amount of the tuition and fee payment made on behalf of each eligible student who has not received funds under this section for a preceding year; and

(B) After making reductions under subparagraph (A) of this paragraph, ratably reduce the amount of the tuition and fee payments made on behalf of all other eligible students.

(2) *Adjustments.* — The Mayor may adjust the amount of tuition and fee payments made under paragraph (1) of this subsection based on:

(A) The financial need of the eligible students to avoid undue hardship to the eligible students; or

(B) Undue administrative burdens on the Mayor.

(3) *Further adjustments.* — Notwithstanding paragraphs (1) and (2) of this subsection, the Mayor may prioritize the making or amount of tuition and fee payments under this subsection based on the income and need of eligible students.

(c) *Definitions.* — In this section:

(1) *Eligible institution.* — The term “eligible institution” means an institution that:

(A) Is a public institution of higher education located —

(i) In the State of Maryland or the Commonwealth of Virginia; or

(ii) Outside the State of Maryland or the Commonwealth of Virginia, but only if the Mayor:

(I) Determines that a significant number of eligible students are experiencing difficulty in gaining admission to any public institution of higher education located in the State of Maryland or the Commonwealth of Virginia because of any preference afforded in-State residents by the institution;

(II) Consults with the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Secretary regarding expanding the program under this section to include such institutions located outside of the State of Maryland or the Commonwealth of Virginia; and

(III) Takes into consideration the projected cost of the expansion and the potential effect of the expansion on the amount of individual tuition and fee payments made under this section in succeeding years;

(B) Is eligible to participate in the student financial assistance programs under title IV of the Higher Education Act of 1965 (20 U.S.C. § 1070 et seq.); and

(C) Enters into an agreement with the Mayor containing such conditions as the Mayor may specify, including a requirement that the institution use the funds made available under this section to supplement and not supplant assistance that otherwise would be provided to eligible students from the District of Columbia.

(2) *Eligible student.* — The term “eligible student” means an individual who:

(A)(i) In the case of an individual who begins an undergraduate course of study within 3 calendar years (excluding any period of service on active duty in the armed forces, or service under the Peace Corps Act (22 U.S.C. § 2501 et seq.) or subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. § 12571 et seq.)) of graduation from a secondary school, or obtaining the recognized equivalent of a secondary school diploma, was domiciled in the District of Columbia for not less than the 12 consecutive months preceding the commencement of the freshman year at an institution of higher education;

(ii) In the case of an individual who graduated from a secondary school or received the recognized equivalent of a secondary school diploma before January 1, 1998, and is currently enrolled at an eligible institution as of April 4, 2002, was domiciled in the District of Columbia for not less than the 12 consecutive months preceding the commencement of the freshman year at an institution of higher education; or

(iii) In the case of any other individual and an individual re-enrolling after more than a 3-year break in the individual's post-secondary education, has been domiciled in the District of Columbia for at least 5 consecutive years at the date of application;

(B)(i) Graduated from a secondary school or received the recognized equivalent of a secondary school diploma on or after January 1, 1998;

(ii) In the case of an individual who did not graduate from a secondary school or receive a recognized equivalent of a secondary school diploma, is accepted for enrollment as a freshman at an eligible institution on or after January 1, 2002; or

(iii) In the case of an individual who graduated from a secondary school or received the recognized equivalent of a secondary school diploma before January 1, 1998, is currently enrolled at an eligible institution as of April 4, 2002;

(C) Meets the citizenship and immigration status requirements described in section 484(a)(5) of the Higher Education Act of 1965 (20 U.S.C. § 1091(a)(5));

(D) Is enrolled or accepted for enrollment, on at least a half-time basis, in a degree, certificate, or other program (including a program of study abroad approved for credit by the institution at which such student is enrolled) leading to a recognized educational credential at an eligible institution;

(E) If enrolled in an eligible institution, is maintaining satisfactory progress in the course of study the student is pursuing in accordance with section 484(c) of the Higher Education Act of 1965 (20 U.S.C. § 1091(c));

(F) Has not completed the individual's first undergraduate baccalaureate course of study; and

(G) Is from a family with a taxable income of less than \$1,000,000.

(3) *Institution of higher education.* — The term "institution of higher education" has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. § 1001).

(4) *Mayor.* — The term "Mayor" means the Mayor of the District of Columbia.

(5) *Secondary school.* — The term "secondary school" has the meaning given that term under section 14101 of the Elementary and Secondary Education Act of 1965 [20 U.S.C. § 8801].

(6) *Secretary.* — The term "Secretary" means the Secretary of Education.

(d) *Construction.* — Nothing in this chapter shall be construed to require an institution of higher education to alter the institution's admissions policies or standards in any manner to enable an eligible student to enroll in the institution.

(e) *Applications.* — Each student desiring a tuition payment under this section shall submit an application to the eligible institution at such time, in such manner, and accompanied by such information as the eligible institution may require.

(f) *Administration of program.* —

(1) *In general.* — The Mayor shall carry out the program under this section in consultation with the Secretary. The Mayor may enter into a grant,

contract, or cooperative agreement with another public or private entity to administer the program under this section if the Mayor determines that doing so is a more efficient way of carrying out the program.

(2) *Policies and procedures.* — The Mayor, in consultation with institutions of higher education eligible for participation in the program authorized under this section, shall develop policies and procedures for the administration of the program.

(3) *Memorandum of agreement.* — The Mayor and the Secretary shall enter into a Memorandum of Agreement that describes:

(A) The manner in which the Mayor shall consult with the Secretary with respect to administering the program under this section; and

(B) Any technical or other assistance to be provided to the Mayor by the Secretary for purposes of administering the program under this section (which may include access to the information in the common financial reporting form developed under section 483 of the Higher Education Act of 1965 (20 U.S.C. § 1090)).

(g) *Mayor's report.* — The Mayor shall report to Congress annually regarding:

(1) The number of eligible students attending each eligible institution and the amount of the grant awards paid to those institutions on behalf of the eligible students;

(2) The extent, if any, to which a ratable reduction was made in the amount of tuition and fee payments made on behalf of eligible students; and

(3) The progress in obtaining recognized academic credentials of the cohort of eligible students for each year.

(h) *GAO report.* — Beginning on November 12, 1999, the Comptroller General of the United States shall monitor the effect of the program assisted under this section on educational opportunities for eligible students. The Comptroller General shall analyze whether eligible students had difficulty gaining admission to eligible institutions because of any preference afforded in-State residents by eligible institutions, and shall expeditiously report any findings regarding such difficulty to Congress and the Mayor. In addition the Comptroller General shall:

(1) Analyze the extent to which there are an insufficient number of eligible institutions to which District of Columbia students can gain admission, including admission aided by assistance provided under this chapter, due to:

(A) Caps on the number of out-of-State students the institution will enroll;

(B) Significant barriers imposed by academic entrance requirements (such as grade point average and standardized scholastic admissions tests); and

(C) Absence of admission programs benefiting minority students;

(2) Assess the impact of the program assisted under this chapter on enrollment at the University of the District of Columbia; and

(3) Report the findings of the analysis described in paragraph (1) of this subsection and the assessment described in paragraph (2) of this subsection to Congress and the Mayor.

(i) *Authorization of appropriations.* — There are authorized to be appropriated to the District of Columbia to carry out this section \$12,000,000 for fiscal year 2000 and (subject to § 38-2706) such sums as may be necessary for each of the 12 succeeding fiscal years. Such funds shall remain available until expended.

(j) *Effective date.* — This section shall take effect with respect to payments for periods of instruction that begin on or after January 1, 2000.

(Nov. 12, 1999, 113 Stat. 1323, Pub. L. 106-98, § 3; Apr. 4, 2002, 116 Stat. 118, Pub. L. 107-157, §§ 2, 5(b)(1); Dec. 17, 2004, 118 Stat. 3637, Pub. L. 108-457, § 1(a); Oct. 24, 2007, 121 Stat. 1013, Pub. L. 110-97, §§ 1(a), 2(a).)

Effect of amendments. — D.C. Law 107-157 rewrote subsecs. (c)(2)(A), (B), and (C); and, in subsec. (i), substituted “and (subject to § 38-2706) such sums” for “and such sums”.

authority under Public Law 106-98, the “District of Columbia College Access Act of 1999”, see Mayor’s Order 2000-45, March 24, 2000 (47 DCR 4720).

Delegation of Authority. — Delegation of

§ 38-2703. Assistance to the University of the District of Columbia.

(a) *In General.* — Subject to subsection (c) of this section, the Secretary may provide financial assistance to the University of the District of Columbia for the fiscal year to enable the university to carry out activities authorized under part B of title III of the Higher Education Act of 1965 (20 U.S.C. § 1060 et seq.).

(b) *Authorization of Appropriations.* — There are authorized to be appropriated to the District of Columbia to carry out this section \$1,500,000 for fiscal year 2000 and such sums as may be necessary for each of the five succeeding fiscal years.

(c) *Special Rule.* — For any fiscal year, the University of the District of Columbia may receive financial assistance pursuant to this section, or pursuant to part B of title III of the Higher Education Act of 1965 [20 U.S.C. § 1060 et seq.], but not pursuant to both this section and such part B.

(Nov. 12, 1999, 113 Stat. 1327, Pub. L. 106-98, § 4.)

Delegation of Authority. — Delegation of authority under Public Law 106-98, the “District of Columbia College Access Act of 1999”,

see Mayor’s Order 2000-45, March 24, 2000 (47 DCR 4720).

§ 38-2704. Private school program.

(a) *Grants.* —

(1) *In general.* — From amounts appropriated under subsection (f) the Mayor shall award grants to eligible institutions that enroll eligible students to pay the cost of tuition and fees at the eligible institutions on behalf of each eligible student enrolled in an eligible institution. The Mayor may prescribe such regulations as may be necessary to carry out this section.

(2) *Maximum student amounts.* — An eligible student shall have paid on the student’s behalf under this section:

(A) Not more than \$2,500 for any 1 award year (as defined in section 481 of the Higher Education Act of 1965 (20 U.S.C. § 1088)); and

(B) A total of not more than \$12,500.

(3) *Proration.* — The Mayor shall prorate payments under this section for students who attend an eligible institution on less than a full-time basis.

(b) *Reduction for insufficient appropriations.* —

(1) *In general.* — If the funds appropriated pursuant to subsection (f) for any fiscal year are insufficient to award a grant in the amount determined under subsection (a) on behalf of each eligible student enrolled in an eligible institution, then the Mayor shall:

(A) First, ratably reduce the amount of the tuition and fee payment made on behalf of each eligible student who has not received funds under this section for a preceding year; and

(B) After making reductions under subparagraph (A), ratably reduce the amount of the tuition and fee payments made on behalf of all other eligible students.

(2) *Adjustments.* — The Mayor may adjust the amount of tuition and fee payments made under paragraph (1) based on:

(A) The financial need of the eligible students to avoid undue hardship to the eligible students; or

(B) Undue administrative burdens on the Mayor.

(3) *Further adjustments.* — Notwithstanding paragraphs (1) and (2), the Mayor may prioritize the making or amount of tuition and fee payments under this subsection based on the income and need of eligible students.

(c) *Definitions.* — In this section:

(1) *Eligible institution.* — The term “eligible institution” means an institution that:

(A)(i) Is a private, nonprofit, associate or baccalaureate degree-granting, institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. § 1001(a)), the main campus of which is located:

(I) In the District of Columbia;

(II) In the city of Alexandria, Falls Church, or Fairfax, or the county of Arlington or Fairfax, in the Commonwealth of Virginia, or a political subdivision of the Commonwealth of Virginia located within any such county; or

(III) In the county of Montgomery or Prince George’s in the State of Maryland, or a political subdivision of the State of Maryland located within any such county;

(ii) Is eligible to participate in the student financial assistance programs under title IV of the Higher Education Act of 1965 (20 U.S.C. § 1070 et seq.); and

(iii) Enters into an agreement with the Mayor containing such conditions as the Mayor may specify, including a requirement that the institution use the funds made available under this section to supplement and not supplant assistance that otherwise would be provided to eligible students from the District of Columbia; or

(B) Is a private historically Black college or university (for purposes of this subparagraph such term shall have the meaning given the term “part B institution” in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. § 1061(2)).

(2) *Eligible student.* — The term “eligible student” means an individual who meets the requirements of subparagraphs (A) through (G) of § 38-2702(c)(2).

(3) *Mayor.* — The term “Mayor” means the Mayor of the District of Columbia.

(4) *Secretary.* — The term “Secretary” means the Secretary of Education.

(d) *Application.* — Each eligible student desiring a tuition and fee payment under this section shall submit an application to the eligible institution at such time, in such manner, and accompanied by such information as the eligible institution may require.

(e) *Administration of program.* —

(1) *In general.* — The Mayor shall carry out the program under this section in consultation with the Secretary. The Mayor may enter into a grant, contract, or cooperative agreement with another public or private entity to administer the program under this section if the Mayor determines that doing so is a more efficient way of carrying out the program.

(2) *Policies and procedures.* — The Mayor, in consultation with institutions of higher education eligible for participation in the program authorized under this section, shall develop policies and procedures for the administration of the program.

(3) *Memorandum of agreement.* — The Mayor and the Secretary shall enter into a Memorandum of Agreement that describes:

(A) The manner in which the Mayor shall consult with the Secretary with respect to administering the program under this section; and

(B) Any technical or other assistance to be provided to the Mayor by the Secretary for purposes of administering the program under this section.

(f) *Authorization of appropriations.* — There are authorized to be appropriated to the District of Columbia to carry out this section \$5,000,000 for fiscal year 2000 and (subject to § 38-2706) such sums as may be necessary for each of the 12 succeeding fiscal years. Such funds shall remain available until expended.

(g) *Effective Date.* — This section shall take effect with respect to payments for periods of instruction that begin on or after January 1, 2000.

(Nov. 12, 1999, 113 Stat. 1327, Pub. L. 106-98, § 5; Apr. 4, 2002, 116 Stat. 119, Pub. L. 107-157, §§ 3, 5(b)(2); Dec. 17, 2004, 118 Stat. 3637, Pub. L. 108-457, § 1(b); Oct. 24, 2007, 121 Stat. 1013, Pub. L. 110-97, §§ 1(b), 2(b).)

Effect of amendments. — D.C. Law 107-157, in subsec. (c)(1)(B), deleted “the main campus of which is located in the State of Maryland or the Commonwealth of Virginia” at the end of the subparagraph; and, in subsec. (f), substituted “and (subject to § 38-2706) such sums” for “and such sums”.

Pub. L. 108-457, in subsec. (f), substituted “7” for “five”.

Pub. L. 110-97, in subsec. (c)(2), substituted “through (G)” for “through (F)”; and, in subsec. (f), substituted “12 succeeding fiscal years” for “7 succeeding fiscal years”.

§ 38-2705. General requirements.

(a) *Personnel.* — The Secretary of Education shall arrange for the assignment of an individual, pursuant to subchapter VI of chapter 33 of title 5, United States Code, to serve as an adviser to the Mayor of the District of Columbia with respect to the programs assisted under this chapter.

(b) *Administrative expenses.* —

(1) *In general.* — The Mayor of the District of Columbia may not use more than 7% percent of the total amount of Federal funds appropriated for the program, retroactive to November 12, 1999, for the administrative expenses of the program.

(2) *Definition.* — In this subsection, the term “administrative expenses” means any expenses that are not directly used to pay the cost of tuition and fees for eligible students to attend eligible institutions.

(c) *Inspector general review.* — Each of the programs assisted under this chapter shall be subject to audit and other review by the Inspector General of the Department of Education in the same manner as programs are audited and reviewed under the Inspector General Act of 1978 (5 U.S.C. App.).

(d) *Gifts.* — The Mayor of the District of Columbia may accept, use, and dispose of donations of services or property for purposes of carrying out this chapter.

(e) *Local funds.* — It is the sense of Congress that the District of Columbia may appropriate such local funds as necessary for the programs under §§ 38-2702 and 38-2704.

(f) *Funding rule.* — Notwithstanding § 38-2702 or § 38-2704, the Mayor may use funds made available:

(1) Under § 38-2702 to award grants under § 38-2704 if the amount of funds made available under § 38-2702 exceeds the amount of funds awarded under § 38-2702 during a time period determined by the Mayor; and

(2) Under § 38-2704 to award grants under § 38-2702 if the amount of funds made available under § 38-2704 exceeds the amount of funds awarded under § 38-2704 during a time period determined by the Mayor.

(g) *Maximum student amount adjustments.* — The Mayor shall establish rules to adjust the maximum student amounts described in §§ 38-2702(a)(2)(B) and 38-2704(a)(2)(B) for eligible students described in § 38-2702(c)(2) or § 38-2704(c)(2) who transfer between the eligible institutions described in § 38-2702(c)(1) or § 38-2704(c)(1).

(h) *Dedicated account for programs.* —

(1) *Establishment.* — The District of Columbia government shall establish a dedicated account for the programs under §§ 38-2702 and 38-2704 consisting of the following amounts:

(A) The Federal funds appropriated to carry out such programs under this chapter or any other Act.

(B) Any District of Columbia funds appropriated by the District of Columbia to carry out such programs.

(C) Any unobligated balances in amounts made available for such programs in previous fiscal years.

(D) Interest earned on balances of the dedicated account.

(2) *Use of funds.* — Amounts in the dedicated account shall be used solely to carry out the programs under §§ 38-2702 and 38-2704.

(Nov. 12, 1999, 113 Stat. 1329, Pub. L. 106-98, § 6; Apr. 4, 2002, 116 Stat. 119, Pub. L. 107-157, § 4.)

Effect of amendments. — D.C. Law 107-157 rewrote subsec. (b); redesignated subsecs. (e) and (f) as subsecs. (f) and (g); and added new subsecs. (e) and (h). Prior to amendment, subsec. (b) read as follows: “(b) Administrative Expenses.—The Mayor of the District of Co-

lumbia may use not more than 7 percent of the funds made available for a program under § 38-2702 or § 38-2704 for a fiscal year to pay the administrative expenses of a program under § 38-2702 or § 38-2704 for the fiscal year.”

§ 38-2706. Limit on aggregate amount of federal funds for public school and private school programs.

The aggregate amount authorized to be appropriated to the District of Columbia for the programs under §§ 38-2702 and 38-2704 for any fiscal year may not exceed—

- (1) \$17,000,000, in the case of the aggregate amount for fiscal year 2003;
- (2) \$17,000,000, in the case of the aggregate amount for fiscal year 2004;

or

- (3) \$17,000,000, in the case of the aggregate amount for fiscal year 2005.

(Nov. 12, 1999, 113 Stat. 1323, Pub. L. 106-98, § 7, as added Apr. 4, 2002, 116 Stat. 118, Pub. L. 107-157, § 5(a).)

CHAPTER 27A. HIGHER EDUCATION FINANCIAL ASSISTANCE.

Sec.	Sec.
38-2731. Definitions.	Educational Assistance Partnership Program.
38-2732. DC Leveraging Educational Assistance Partnership Program.	38-2734. Annual reports.
38-2733. Grant awards for DC Leveraging Ed-	

§ 38-2731. Definitions.

For the purposes of this chapter, the term:

(1) "Academic year" shall have the same meaning as provided in section 481 of the Higher Education Act [20 U.S.C. § 1088].

(2) "DC Leveraging Educational Assistance Partnership Program" means the college financial assistance program administered by the State Education Office pursuant to Subpart 4 of Part A of Title IV of the Higher Education Act [20 U.S.C. § 1070c et seq.].

(3) "Eligible institution" means an institution that:

(A) Is an institution of higher education, either public or private, with its principal campus in the District of Columbia; and

(B) Is eligible to receive Student Aid Program funds under Title IV of the Higher Education Act [20 U.S.C. § 1070 et seq.].

(4) "Eligible student" means a District resident who meets the eligibility criteria for the DC Leveraging Educational Assistance Partnership Program administered by the State Education Office.

(5) "Higher Education Act" means the Higher Education Act of 1965, approved November 8, 1965 [(79 Stat. 1219; 20 U.S.C. § 1001 et seq.)].

(6) "Institution of higher education" shall have the same meaning as provided in section 101 of the Higher Education Act [20 U.S.C. § 1001].

(7) "Qualified higher education expenses" means:

(A) Tuition, fees, and the cost of books, supplies, and equipment required for the enrollment or attendance of a qualified beneficiary at an eligible institution;

(B) The costs of room and board of a qualified beneficiary incurred while attending an eligible institution; provided, that the amount of room and board shall not exceed the minimum room and board allowance determined in calculating costs of attendance for federal financial aid programs under section 472 of the Higher Education Act [20 U.S.C. § 1087ll], or any subsequent legislation and implementing regulations; and

(C) Additional living expenses.

(Mar. 2, 2007, D.C. Law 16-192, § 4022, 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-353, § 137, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in par. (2).

Emergency legislation. — For temporary (90 day) addition, see § 4022 of Fiscal Year 2007 Budget Support Emergency Act of 2006

(D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 4022 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 4022 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — Law 16-192, the “Fiscal Year Budget Support Act of 2006”, was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

Short title. — Short title: Section 4021 of D.C. Law 16-192 provided that subtitle C of

title IV of the act may be cited as the “Higher Education Financial Aid Assistance Act of 2006”.

References in text. — Section 481 of the Higher Education Act, referred to in par. (1), is codified at 20 U.S.C. § 1088.

Subpart 4 of part A of Title IV of the Higher Education Act, referred to in par. (2), is codified at 20 U.S.C. § 1070c et seq.

Title IV of the Higher Education Act, referred to in par. (3)(B), is codified at 20 U.S.C. § 1070 et seq.

Section 101 of the Higher Education Act, referred to in par. (6), is codified at 20 U.S.C. § 1001.

Section 472 of the Higher Education Act, referred to in par. (7)(B), is codified at 20 U.S.C. § 1088.

§ 38-2732. DC Leveraging Educational Assistance Partnership Program.

The State Education Office shall administer the DC Leveraging Educational Assistance Partnership Program.

(Mar. 2, 2007, D.C. Law 16-192, § 4023, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 4023 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 4023 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 4023 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

§ 38-2733. Grant awards for DC Leveraging Educational Assistance Partnership Program.

(a) From local funds appropriated annually for the DC Leveraging Educational Assistance Partnership Program, the State Education Office shall make available grant awards to pay for qualified higher education expenses for no fewer than 800 eligible students attending eligible institutions. If fewer than 800 eligible students from eligible institutions apply, the funds may be used to grant awards to eligible students attending eligible institutions of higher education outside of the District of Columbia.

(b) An eligible student attending an eligible institution shall have paid on the student's behalf under this section:

(A) Not more than \$5,000 for any one academic year; and

(B) A total of not more than \$25,000 over 5 years.

(c) Payments under this section shall be prorated for eligible students who attend an eligible institution on less than a full-time basis.

(Mar. 2, 2007, D.C. Law 16-192, § 4024, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 4024 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 4024 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 4024 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

§ 38-2734. Annual reports.

(a) The Mayor shall report to the Council annually regarding:

(1) The number of eligible students attending each eligible institution and the amount of the grant awards paid to those institutions on behalf of eligible students;

(2) The extent, if any, to which a ratable reduction was made in the amount of higher education assistance payments made on behalf of eligible students; and

(3) The progress made by eligible students each year in obtaining recognized academic credentials.

(b) The State Education Office shall annually make available the following information, to be solicited by the State Education Office and collected from participating institutions:

(1) The enrollment status and graduation rates of students on whose behalf funding from this program has been paid to eligible institutions; and

(2) The enrollment status and graduation rates of students on whose behalf funding has been paid from the DC Tuition Assistance Grant Program, established by Chapter 27 of this title.

(Mar. 2, 2007, D.C. Law 16-192, § 4025, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 4025 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 4025 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 4025 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

SUBTITLE X. SCHOOL FUNDING.

CHAPTER 28. SCHOOL-BASED BUDGETING AND ACCOUNTABILITY.

Subchapter I. General Provisions

Sec.

38-2801. [Repealed].

38-2802. Personnel files.

38-2803. Facilities Master Plan; annual updates.

38-2804. Allocation of funds to each school system.

Sec.

38-2805. Reform implementation plans.

38-2806. Accountability Plan.

38-2807. District of Columbia public school funding.

Subchapter II. Budgeting

38-2831. Budget submission requirements.

Subchapter I. General Provisions.

§ 38-2801. Annual budget required. [Repealed].

Repealed.

(Mar. 26, 1999, D.C. Law 12-175, § 1102, 45 DCR 7193; Sept. 24, 2010, D.C. Law 18-223, § 4033, 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 31-151.

Emergency legislation. — For temporary addition of subchapter, see §§ 702-708 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and §§ 702-708 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary (90-day) addition of Chapter 1B 1981 Ed., see §§ 702 to 708 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90 day) repeal of section, see § 4033 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 12-175. — Law 12-175, the “Fiscal Year 1999 Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Editor’s notes. — School Based Budgeting and Accountability Act of 1998: Section 1101 of D.C. Law 12-175 provided that title XI of the act may be cited as the “School Based Budgeting and Accountability Act of 1998.”

§ 38-2802. Personnel files.

The District of Columbia Public Schools (“DCPS”) shall, by December 31, 1998, contract with a firm experienced in human resource management to comprehensively rebuild all DCPS employee personnel files.

(Mar. 26, 1999, D.C. Law 12-175, § 1103, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 31-152.

Emergency legislation. — For temporary addition of subchapter see notes to § 38-2801.

For temporary (90-day) addition of Chapter 1B 1981 Ed., see notes following § 38-2801.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 38-2801.

§ 38-2803. Facilities Master Plan; annual updates.

(a) The Mayor shall submit a revised comprehensive multiyear Master Facilities Plan for the District of Columbia Public Schools and public charter schools, developed with the Office of Public Education Facilities Modernization in accordance with this section, along with the Mayor's annual submission of a budget recommendation for public schools to the Council for review and approval, which shall include a school disposition plan delineating the process through which citizen involvement shall be facilitated, and establishing the criteria that shall be utilized in disposition decisions, one of which must be consideration of the impact of any proposed new use of a school building on the neighborhood in which the building is located.

(b)(1) The Mayor shall establish an Office of Public Education Facilities Planning ("OPEFP") within the Office of the Deputy Mayor for Education responsible for the development of the Master Facilities Plan, which shall function as a citywide public education facilities plan.

(2) The OPEFP shall include in the Master Facilities Plan detailed, current analyses and data on:

(A) The facilities condition assessment for each school building and facility under the control and jurisdiction of the District of Columbia Public Schools;

(B) The capacity of existing schools, current level of utilization, and recommendations for the utilization or reduction of excess space, including, as appropriate, specific recommendations on:

(i) Consolidation;

(ii) Closure; and

(iii) Co-location;

(C) Historical and projected enrollment;

(D) Current and projected demographic information for the surrounding neighborhood;

(E) Other neighborhood issues, in coordination with the Office of Planning;

(F) A school-by-school description relating facility needs and requirements to:

(i) The facility's programmatic usage with specific linkages and relationships to adopted education plans of a local education agency, school district, or institution, including specific plans for special education, early childhood education, and career and technical education programs; and

(ii) The statewide education and youth development plan described in § 38-191, and how it enables schools to be centers of the community;

(G) A detailed facility portfolio analysis that will inform any decisions related to alternative financing options, including public/private development partnerships and co-location opportunities;

(H) A communications and community involvement plan for each school that includes engagement of key stakeholders throughout the community, including:

(i) Local school restructuring teams;

- (ii) School improvement teams; and
- (iii) Advisory Neighborhood Commissions;

(I) The coordination of the District's education sector with housing, health, and welfare sectors, and with economic development policies and plans;

(J) The location, planning, use, and design of the District's educational facilities and campuses.

(3) The following agencies shall work with the OPEFP in the development of the Master Facilities Plan:

(A) The District of Columbia Public Schools, which shall transmit to the OPEFP educational plans and policies it considers relevant to the facilities planning process and provide the educational specifications for each facility subject to modernization;

(B) The Public Charter School Board, which shall:

(i) Transmit to the OPEFP educational plans and policies of individual public charter schools, data on existing public charter school facilities and facilities-related needs, and other information considered relevant to the planning process; and

(ii) Establish a Public Charter School facilities registry in which individual public charter schools will have the opportunity to register to receive facilities planning and technical support from the OPEFP, including the analyses and data compiled pursuant to paragraph (2) of this subsection;

(C) The Office of Planning, which shall provide demographic and neighborhood data support; and

(D) The Office of Public Education Facilities Modernization, which shall implement the Master Facilities Plan consistent with the policy priorities set forth in this chapter.

(4) Of the fiscal year 2011 capital funds appropriated to the Office of Public Education Facilities Modernization, it shall transfer:

(A) Up to \$500,000 to the Office of the Deputy Mayor for Education to support capital planning pursuant to subsection (b)(1) of this section; and

(B) An amount of \$100,000 to the District of Columbia Public Schools and \$100,000 to the Public Charter School Board to support capital planning activities as provided in paragraph (3) of this subsection.

(c) In developing the Facilities Master Plan, the Mayor shall consider the facilities needs of all public school students and shall consult with:

(1) The Council;

(2) The Director of the Office of Public Education Facilities Modernization;

(3) The Public Charter School Board;

(4) Representatives of public charter schools;

(5) The Public School Modernization Advisory Committee; and

(6) Key stakeholders throughout the community.

(d)(1) Beginning in fiscal year 2010, a Public School Facility capital improvement plan ("School Facility CIP") shall be updated each fiscal year as part of the Mayor's capital improvement plan for all public facilities, as required by § 1-204.44.

(2)(A) The School Facility CIP shall include for each school and other

education facilities of DCPS and public charter schools, the following information:

- (i) A description of the scope of work to be done and schedule of major milestones;
- (ii) Justification for the work pursuant to the Master Facilities Plan;
- (iii) A full-funded cost estimate of improvements planned for the next fiscal year and the succeeding 5 fiscal years;
- (iv) The estimated cost of operating the improved facility, whether the new cost is more or less than the previous School Facility CIP estimate;
- (v) The amount of capital funds expended in the prior fiscal year; and
- (vi) The name, address, and ward of each project.

(B) Each School facility CIP shall:

- (i) Meet the requirements listed in subsection (b) of this section;
- (ii) Give due consideration to the record established by the testimony, and any exhibits, during the hearing required by paragraph (3) of this subsection; and
- (iii) Be consistent with the policy of broad public participation, as stated in this section.

(3)(A) No more than 60 days or less than 30 days prior to the Mayor's submission of a School Facility CIP to the Council, and upon 15 days public notice, the Mayor shall conduct a public hearing to solicit the views of the public. In no event shall the hearing be prior to the annual submission by the Office of Public Education Facilities Modernization of its proposed budget to the Mayor.

(B) The Mayor shall transmit the record of the hearing to the Council at or before the public hearing on the annually submitted proposed budget for Office of Public Education Facilities Modernization.

(Mar. 26, 1999, D.C. Law 12-175, § 1104, 45 DCR 7193; Oct. 20, 2005, D.C. Law 16-33, § 4047, 52 DCR 7503; June 8, 2006, D.C. Law 16-123, § 221, 53 DCR 2843; June 12, 2007, D.C. Law 17-9, § 1009, 54 DCR 4102; Mar. 3, 2010, D.C. Law 18-111, § 4071, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 4122, 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 31-153.

Effect of amendments. — D.C. Law 16-33 substituted "June 30, 2006" for "December 31, 1998"; and deleted "There shall be a moratorium on disposition decisions until the facilities plan has been approved by the Council."

D.C. Law 16-123, designated the existing text as subsec. (a); in subsec. (a), substituted "multiyear Facilities Master Plan, which shall include" for "Long Range Master Facilities Plan which shall include annual updates to the facilities plan, as well as"; and added subsecs. (b), (c), and (d).

D.C. Law 17-9 rewrote subsecs. (a), (b)(1), (c), and (d).

D.C. Law 18-111 rewrote the section.

D.C. Law 18-223 rewrote subsec. (b).

Emergency legislation. — For temporary addition of subchapter see notes to § 38-2801.

For temporary (90-day) addition of Chapter 1B 1981 Ed., see notes following § 38-2801.

For temporary (90 day) amendment of section, see § 4047 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 4011 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see § 4071 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 4071 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) addition of section, see § 4112 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 4122 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 38-2801.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Short title. — Short title: Section 4070 of D.C. Law 18-111 provided that subtitle H of title IV of the act may be cited as the “Master Facilities Plan and School Facility Capital Improvement Plan Reconciliation Amendment Act of 2009”.

Short title: Section 4111 of D.C. Law 18-223 provided that subtitle L of title IV of the act may be cited as the “Master Facilities Plan Approval Act of 2010”.

Short title: Section 4121 of D.C. Law 18-223 provided that subtitle M of title IV of the act

may be cited as the “Office of Public Education Facilities Planning Establishment Amendment Act of 2010”.

Editor’s notes. — Section 4112 of D.C. Law 18-223 provided:

“Sec. 4112. (a) Pursuant to section 1104 of the School Based Budgeting and Accountability Act of 1998, approved March 26, 1999 (D.C. Law 12-175; D. C. Official Code § 38-2803), the following components of the Master Facilities Plan for the District of Columbia Public Schools for 2010, as submitted by the Mayor to the Council, on April 1, 2010 (“2010 MFP”) are approved:

“(1) All priorities, objectives, and methods of defining modernization, including the phased approach to elementary and middle schools;

“(2) Demographics and Data;

“(3) Plan Detail Narrative, including school-by-school detail, known as Mini-Master Plans; and

“(4) The glossary of terms.

“(b) The Schedule of modernization, including sequencing and project implementation timelines and the budget, including the 8-Year Master Facilities Plan Financial Projection and Scope of Work and Estimated Methodology in the 2010 MFP shall be adjusted pursuant to the Capital Improvement Plan Amendments for Public Education Facilities Act of 2010, passed on 2nd reading on June 15, 2010 (Enrolled version of Bill 18-731), and resubmitted by October 15, 2010, to the Council for review and approval.”

§ 38-2804. Allocation of funds to each school system.

The District of Columbia Public Schools and its Chief Financial Officer shall, by October 1, 1998, provide to the Council of the District of Columbia a comprehensive Fiscal Year 1999 budget displaying in detail the amount of funds to be applied to each school system function and the amount of funds to be expected by each individual school. This budget shall state all underlying budget assumptions including, but not limited to, average salaries.

(Mar. 26, 1999, D.C. Law 12-175, § 1105, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 31-154.

Emergency legislation. — For temporary addition of subchapter see notes to § 38-2801.

For temporary (90-day) addition of Chapter 1B 1981 Ed., see notes following § 38-2801.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 38-2801.

§ 38-2805. Reform implementation plans.

The Superintendent shall, by October 15, 1998, provide a detailed Implementation Plan for each component of the General Education Reforms, the Special Education Reforms, and the Central Administration Reforms that will be contained in the Fiscal Year 1999 budget. This Implementation Plan shall

specifically state the number and specific occupation positions that will be added and deleted in order to implement each component of the Implementation Plan.

(Mar. 26, 1999, D.C. Law 12-175, § 1106, 45 DCR 7193; Apr. 27, 1999, D.C. Law 12-267, § 3, 46 DCR 960.)

Prior Codifications. — 1981 Ed., § 31-155.

Temporary Amendment of Section. — Section 2 of D.C. Law 12-211 substituted “October 15, 1998” for “September 15, 1998.”

Section 9 of D.C. Law 12-211 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see §§ 2 and 3 of the Fiscal Year 1999 Budget Support Emergency Amendment Act of 1998 (D.C. Act 12-480, October 28, 1998, 45 DCR 8016), and §§ 2 and 3 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-4, February 8, 1999, 46 DCR 2291).

For temporary addition of subchapter, see notes to § 38-2801.

For temporary (90-day) addition of Chapter 1B 1981 Ed., see notes following § 38-2801.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 38-2801.

Legislative history of Law 12-211. — Law 12-211, the “Fiscal Year 1999 Budget Support Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-773. The Bill was adopted on first and second readings on September 22, 1998, and October 22, 1998, respectively. Signed by the Mayor on November 5, 1998, it was assigned Act No. 12-512 and transmitted to both Houses of Congress for its review. D.C. Law 12-211 became effective on April 13, 1999.

Legislative history of Law 12-267. — Law 12-267, the “Closing of a Public Alley in Square 371, S.O. 96-202, Act of 1998,” was introduced in Council and assigned Bill No. 12-800, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-576 and transmitted to both Houses of Congress for its review. D.C. Law 12-267 became effective on April 27, 1999.

§ 38-2806. Accountability Plan.

The Superintendent shall, by December 15, 1998, provide an Accountability Plan for each school. The Accountability Plan shall set forth five-year student achievement test goals and year one benchmarks, as measured against a baseline derived from student performance levels determined by the “Stanford 9” tests administered in Spring 1998.

(Mar. 26, 1999, D.C. Law 12-175, § 1107, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 31-156.

Emergency legislation. — For temporary addition of subchapter see notes to § 38-2801.

For temporary (90-day) addition of Chapter 1B 1981 Ed., see notes following § 38-2801.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 38-2801.

§ 38-2807. District of Columbia public school funding.

The District of Columbia Public Schools should fully fund pre-kindergarten, full-day kindergarten, school counselors, and librarians.

(Mar. 26, 1999, D.C. Law 12-175, § 1108, 45 DCR 7193.)

Prior Codifications. — 1981 Ed., § 31-157.

Emergency legislation. — For temporary addition of subchapter see notes to § 38-2801.

For temporary (90-day) addition of Chapter 1B 1981 Ed., see notes following § 38-2801.

Legislative history of Law 12-175. — For

legislative history of D.C. Law 12-175, see Historical and Statutory Notes following 38-2801.

Subchapter II. Budgeting.

§ 38-2831. Budget submission requirements.

(a) The Chancellor of the District of Columbia Public Schools (“Chancellor”) shall prepare and execute a performance-based budget on an annual basis. The budget prepared by the Chancellor shall have its operations organized by major programs, which in turn will be composed of activities and services. The budget submitted by the Chancellor shall allocate all monies by revenue source for programs, activity, and service levels, and by revenue source for comptroller source group by program and activity. The District of Columbia Public Schools (“DCPS”) submission shall include the number of full-time equivalents with job titles by program and revenue source.

(b) The DCPS submission shall also include a presentation that specifies all monies budgeted for each school, education campus, and center, including the funds available to each school for which the decision to spend is made by the school’s local school restructuring team, and all other organization Level 4 funds, the spending of which directly benefits local schools, such as textbooks, substitute teachers, special education related services, and athletics, so that the Council and the public may know the totality of funds, goods, and services that will be provided to students at each school, education campus, or center.

(c) No later than 21 days before the Mayor’s submission of the District’s budget and financial plan to the Council, the Chancellor shall, annually, make available on the DCPS website and post at each school a detailed estimate, in accordance with this section, of the amount of money required to operate the public schools for the ensuing year, including preliminary school-by-school budgets.

(d) The Mayor’s annual submission of the District’s budget and financial plan to the Council shall include as an attachment an accurate and verifiable report on the positions and employees of the District of Columbia Public Schools to include:

(1) A compilation of DCPS Schedule A positions for the ensuing fiscal year on a full-time equivalent basis, including a compilation of all positions by organization Level 4, job title, pay plan and grade, program and activity, revenue fund, and annual salary; and

(2) A compilation of all DCPS employees as of the preceding March 1, on a full-time equivalent basis, including a compilation of all positions by organization Level 4, job title, pay plan, grade, and step, program and activity, revenue fund, and annual salary.

(e) No later than October 30 of each year, the Mayor shall submit to the Council a revised appropriated funds operating budget for DCPS for the fiscal year beginning on the preceding October 1 that sets forth the total amount of the approved appropriation and that realigns budgeted data with anticipated actual expenditures with the specification set forth in of subsections (a) and (b) of this section.

(f) Beginning in fiscal year 2011, the Mayor shall submit to the Council quarterly financial reports for DCPS setting forth by organization Level 4 approved budget, revised budget, actual expenditures and funds obligated to date, and projected expenditures for the full fiscal year.

(Dec. 7, 2004, D.C. Law 15-211, § 6, 51 DCR 8805; Mar. 21, 2009, D.C. Law 17-325, § 4, 56 DCR 499; Sept. 24, 2010, D.C. Law 18-223, § 4032, 57 DCR 6242.)

Effect of amendments. — D.C. Law 17-325 rewrote the section, which had read as follows: “The Board of Education shall approve an annual budget for submission to the Council that is consistent with the goals and objectives established by the Board of Education for the operation of the public schools of the District of Columbia. The Board shall prepare and execute a performance-based budget on an annual basis. The budget prepared by the Board shall have its operations organized by major programs, which in turn will be composed of activities and services. The budget submitted by the board shall allocate all monies by activities and object class. The DCPS submission shall also include a presentation that specifies the monies budgeted for each school. This presentation shall specify the funds available to each school for which the decision to spend is made by the school’s local schools restructuring team, and shall specify other responsibility center funds the spending of which directly benefit local schools (e.g., for textbooks, substitute teachers, transportation, maintenance/engineers, nurses, teachers salaries, etc.), so that the Council and the public may know the totality of funds, goods and services that will be provided to the local schools directly.”

D.C. Law 18-223 rewrote the section, which had read as follows: “The Chancellor of the District of Columbia Public Schools (‘Chancellor’) shall prepare and execute a performance-based budget on an annual basis. The budget prepared by the Chancellor shall have its operations organized by major programs, which in turn will be composed of activities and services. The budget submitted by the Chancellor shall allocate all monies by revenue source for programs, activity, and service levels, and by revenue source for comptroller source group by program and activity. The District of Columbia Public Schools submission shall include the number of full-time equivalents with job titles by program and revenue source. The DCPS

submission shall also include a presentation that specifies the monies budgeted for each school. This presentation shall specify the funds available to each school for which the decision to spend is made by the school’s local schools restructuring team, and shall specify other responsibility center funds the spending of which directly benefit local schools (e.g., for textbooks, substitute teachers, transportation, maintenance/engineers, nurses, teachers salaries, etc.), so that the Council and the public may know the totality of funds, goods and services that will be provided to the local schools directly.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 4 of Public Schools Hearing Emergency Amendment Act of 2009 (D.C. Act 18-11, February 25, 2009, 56 DCR 1915).

For temporary (90 day) amendment of section, see § 4032 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 15-211. — Law 15-211, the “Board of Education Continuity and Transition Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-714, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-498 and transmitted to both Houses of Congress for its review. D.C. Law 15-211 became effective on December 7, 2004.

Legislative history of Law 17-325. — For Law 17-325, see notes following § 38-103.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Short title. — Short title: Section 4031 of D.C. Law 18-223 provided that subtitle D of title IV of the act may be cited as the “District of Columbia Public Schools Fiscal Transparency Amendment Act of 2010”.

CHAPTER 29. UNIFORM PER STUDENT FUNDING FORMULA.

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Sec.

- 38-2907. Education costs excluded from the Formula payments.
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Subchapter II. TANF Fund Sharing

- 38-2931. Distribution of TANF or Health and Human Services funds for after-school programs.

Subchapter I. General.

§ 38-2901. Definitions.

For the purposes of this chapter, the term:

(1) "Adult education" means services or instruction below the college level for adults who:

(A) Lack sufficient mastery of basic educational skills to enable them to function effectively in society;

(B) Do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education; or

(C) Have limited ability in speaking, reading, writing, or understanding the English language and whose native language is a language other than English.

(1A) "Allowable special education costs" means costs incurred for the following purposes:

(A) Instruction, salaries, benefits, supplies, textbooks, and other expenses, including:

(i) The cost of salaries and benefits of special education program teachers, regular program teachers, and teacher aides, allocated to the corresponding working time that each person devotes to special education, including services required by an individualized education program;

(ii) Teaching supplies and textbooks for special education programs;

(iii) The purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

(iv) Professional development activities for teachers who work with, or provide services to, students with disabilities;

(v) Contracted services, including fees paid for professional services,

advice, and consultation regarding children with disabilities under the IDEA, and the delivery of special education services by public or private entities; and

(vi) Transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or to in-state and out-of-state individualized education program meetings;

(B) Related services as defined in 34 CFR § 300.34 and supplementary aids and services as defined in 34 CFR § 300.42 and also including the following:

(i) Salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to implementing services required pursuant to an individualized education program ("IEP") as defined in 34 CFR § 300.22.

(ii) Salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to special education services or program;

(iii) Supplies for related services and supplementary aids and services;

(iv) Contracted services, including fees paid for professional advice and consultation regarding children with disabilities under the IDEA or related services and supplementary aids and services, and the delivery of such services by public or private agencies;

(v) Transportation for special education-related services personnel and providers of supplementary aides who travel from school to school or to in-state and out-of-state individualized education program meetings; and

(vi) Equipment purchase, rental, repair, and maintenance required to implement related services and supplementary aids and services as required by a student's individualized education program;

(C) Administrative expenses related to the direct implementation of IDEA Part B programmatic and fiscal requirements within the public school, including:

(i) Salaries and benefits of staff who ensure programmatic and fiscal requirements of IDEA are being implemented, corresponding to the working time that each person devotes to the implementation of IDEA;

(ii) Contracted services, including fees paid for professional services, advice, and consultation regarding the implementation of IDEA, and the delivery of special education services to students with IEPs by public or private entities;

(D) Assistive technology devices for students with IEPs, not including medical devices surgically implanted (i.e., cochlear implant);

(E) Implementation of due process hearing decisions;

(F) Implementation of compensatory education plans;

(G) Implementation of coordinated early intervening services programs (CEIS) as defined in 34 CFR § 300.226; and

(H) Transition of a student back into public schools in the District who, as a result of an IEP decision or due process hearing decision, is currently attending non-public schools.

(1B) "Alternative program" means specialized instruction for students under court supervision or on short- and long-term suspension, or who have

been chronically truant or expelled from a regular District of Columbia Public School or public charter school academic program. To qualify as an alternative program, a school must meet the criteria and rules set by the State Education Office. An alternative program may describe an entire school or a specialized program within a school.

(2) Repealed.

(3) "Consumer Price Index" ("CPI") means the Consumer Price Index for all urban consumers for Washington, DC-MD-VA, Index Base Period 1982-84 or its successor, as issued by the United States Department of Labor, Bureau of Labor Statistics.

(4) "District of Columbia Public Schools" ("DCPS") means the public local education system under the control of the Board of Education or of the Emergency Transitional Education Board of Trustees in its function. The term does not include Public Charter Schools.

(5) "Foundation" or "foundation level" means the amount of funding per weighted student needed to provide adequate regular education services to students. Regular education services do not include special education, language minority education, summer school, capital costs, state education agency functions or services funded through federal and other non-appropriated revenue sources.

(6) "Full-time equivalent" means student enrollment the equal of:

(A) Five hours or more per school day for a minimum of 180 school days for students enrolled in grades pre-school through 12; or

(B) Three hours per day for a minimum of 4 days per week for 36 weeks per school year for adult enrollment.

(6A) "Intensive Program of Special Education Services" means specialized special education services of at least 30 hours per student per week for students with one or more disabling conditions in a self-contained setting during regular school hours.

(7) "Limited English Proficient/Non-English Proficient" ("LEP/NEP") means students identified in accordance with federal law as entitled to English as a second language or bilingual services on the basis of their English language proficiency.

(8) "Per student funding formula" ("Formula") means the formula used to determine annual operating funding for DCPS and Public Charter Schools on a uniform per student basis, pursuant to § 38-1804.01.

(9) "Public Charter School" means a publicly funded school established pursuant to subchapter II of chapter 18 of this title; and except as provided in §§ 38-1802.12(d)(5) and 38-1802.13(c)(5), is not a part of the DCPS.

(10) "Residential school" means a DCPS or Public Charter School that provides students with room and board in a residential setting, in addition to their instructional program.

(10A) "Resident student" means a minor enrolled in a District of Columbia public school or public charter school who has a parent, guardian, or custodian residing in the District of Columbia or an adult enrolled in a District of Columbia public school or a public charter school who resides in the District of Columbia as determined pursuant to Chapter 3 of this title [§ 38-302 et seq.].

(10B) “Self-Contained (Dedicated) Special Education School” means a school that has the capacity to provide all the facilities and services needed to meet the educational and therapeutic needs of its students, which may share a campus or only a building with a general education school.

(11) “Special education” means specialized services for students identified as having disabilities, as provided in section 101(a)(1) of the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1401(a)(1)), or students who are individuals with a disability as provided in section 7(8) of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 359; 29 U.S.C. § 706(8)).

(11A) “Special Education Capacity Fund” means funds provided to public schools through the Formula to support activities required to improve the quality of special education programming available to students and to ensure that all personnel necessary to carry out Part B of the Individuals with Disabilities Education Act (“IDEA”) pursuant to 34 CFR § 300.207, are appropriately and adequately prepared, subject to the requirements of 34 CFR § 300.156 related to personnel qualifications for teachers, related service providers, and paraprofessionals.

(11B) “Special Education Compliance Fund” means funds provided to public schools through the “Formula” to support activities required to address identified noncompliance with federal and local laws and regulations regarding the provision of special education services to students with disabilities.

(11C) “Special Education Payment” means funding appropriated by the District through the “Formula” in the following budget categories: Special education schools, Special Education Add-ons, Special Education Capacity Fund, Special Education Compliance Fund, Residential Add-ons for Special Education, and Special Education Add-ons for Students with Extended School Year (“ESY”) Indicated in Their Individualized Education Programs.

(11D) “Special Education School” means a separate DCPS or public charter day school or residential school dedicated exclusively to serving special education students at levels 4 or 5.

(12) “State level costs” means costs incurred by the DCPS in its function as a state education agency, including the census of minors pursuant to § 38-204, impact aid surveys, issuance of work permits, conduct of hearings and appeals, employee certification, administration of federal aid to agencies or institutions outside of the DCPS or Public Charter Schools administration. For purposes of the Formula, transportation of students with disabilities and payment of tuition for private placements of children with disabilities are considered state level costs.

(13) “Summer school” means an accelerated instructional program provided outside the regular school year of 180 days for students in targeted grades or grade spans pursuant to promotion policies of the District of Columbia Public Schools and public charter schools.

(14) “Weighting” is a multiplication factor applied to the foundation cost for student counts in certain grade levels or special needs programs to account for differences in the cost of educating these students.

(Mar. 26, 1999, D.C. Law 12-207, § 102, 45 DCR 8095; Oct. 1, 2002, D.C. Law

14-190, § 3402(a), 49 DCR 6968; Apr. 13, 2005, D.C. Law 15-348, 101(a), 52 DCR 1991; Mar. 2, 2007, D.C. Law 16-192, § 4002(a), 53 DCR 6899; Apr. 24, 2007, D.C. Law 16-305, § 57(a), 53 DCR 6198; Sept. 18, 2007, D.C. Law 17-20, § 4002(a), 54 DCR 7052; Sept. 14, 2011, D.C. Law 19-21, § 4003(a), 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 31-2901.

Effect of amendments. — D.C. Law 14-190 added par. (11A).

D.C. Law 15-348 added par. (10A).

D.C. Law 16-192 added par. (1A); repealed par. (2); and rewrote pars. (6) and (13).

D.C. Law 16-305, in par. (12), substituted “students with disabilities” for “handicapped students” and “children with disabilities” for “handicapped children”.

D.C. Law 17-20 added pars. (6A) and (10B).

D.C. Law 19-21 redesignated par. (1A) as (1B) and par. (11A) as (11D); and added pars. (1A) and (11A) to (11C).

Temporary Amendment of Section. — Section 2(a) of D.C. Laws 13-427 added paragraph 10A to read as follows:

“(10A) ‘Resident student’ means a student who is enrolled in a District of Columbia public school or a public charter school, and is an adult who resides in the District of Columbia, or is a minor who has a parent, guardian, or custodian residing in the District of Columbia.”

Section 6(b) of D.C. Laws 13-427 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 13-262 added (11A) to read as follows:

“(11A) ‘Special education school’ means a specialized instructional program for students with disabilities as described in paragraph (11) of this section whose individual education plan calls for full-time placement in special education services.”

Section 4(b) of D.C. Law 13-262 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 14-6 added a new par. (11A) to read as follows:

“(11A) ‘Special education school’ means a specialized instructional program for students with disabilities as described in paragraph (11) of this section whose individual education plan calls for full-time placement in special education services.”

Section 4(b) of D.C. Law 14-6 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 14-38 added a new paragraph (10A) to read as follows:

“(10A) ‘Resident student’ means a student who is enrolled in a District of Columbia public school or a public charter school, and is an adult who resides in the District of Columbia, or is a

minor who has a parent, guardian, or custodian residing in the District of Columbia.”

Section 6(b) of D.C. Law 14-38 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 15-67 added par. (10A) to read as follows:

“(10A) ‘Resident student’ means a minor enrolled in a District of Columbia public school or public charter school who has a parent, guardian, or custodian residing in the District of Columbia or an adult enrolled in a District of Columbia public school or a public charter school who resides in the District of Columbia.”

Section 6(b) of D.C. Law 15-67 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Section 2 of D.C. Law 12-180 enacted §§ 31-2901 through 31-2912, comprising Chapter 29 of Title 31 1981 Ed. .

Section 18(b) of D.C. Law 12-180 provided that this act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary addition of chapter, see §§ 2-15 of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Second Emergency Act of 1998 (D.C. Act 12-392, July 17, 1998, 45 DCR 6433), and §§ 2-15 of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Congressional Review Emergency Act of 1999 (D.C. Act 13-15, February 10,

Legislative history of Law 12-180. — Law 12-180, the “Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Second Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-680. The Bill was adopted on first and second readings on June 2, 1998, and July 7, 1998, respectively. Signed by the Mayor on July 23, 1998, it was assigned Act No. 12-426 and transmitted to both Houses of Congress for its review. D.C. Law 12-180 became effective on March 26, 1999.

Legislative history of Law 12-207. — Law 12-207, the “Uniform Per Student Funding Formula for Public Schools and Public Charter Schools and Tax Conformity Clarification Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee on Education, Libraries, and Recreation. The Bill was adopted on first and second readings on July 7,

1998, and September 22, 1998, respectively. Signed by the Mayor on October 16, 1998, it was assigned Act No. 12-494 and transmitted to both Houses of Congress for its review. D.C. Law 12-207 became effective on March 26, 1999.

Legislative history of Law 13-262. — Law 13-262, the “Uniform Per Student Funding Formula Temporary Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-926. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 22, 2000, it was assigned Act No. 13-551 and transmitted to both Houses of Congress for its review. D.C. Law 13-262 became effective on April 3, 2001.

Legislative history of Law 14-6. — Law 14-6, the “Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Temporary Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-81, which was retained by Council. The Bill was adopted on first and second readings on February 6, 2001, and March 6, 2001, respectively. Signed by the Mayor on March 22, 2001, it was assigned Act No. 14-36 and transmitted to both Houses of Congress for its review. D.C. Law 14-6 became effective on June 13, 2001.

Legislative history of Law 14-38. — For Law 14-38, see notes following § 38-1800.02.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

Legislative history of Law 15-67. — For Law 15-67, see notes following § 38-1800.02.

Legislative history of Law 15-348. — For Law 15-348, see notes following § 38-1800.02.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 38-911.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

Short title. — Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act: D.C. Law 12-207 provided that this chapter may be cited as the “Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998.”

Short title of subtitle A of title XXXIV of Law 14-190: Section 3401 of D.C. Law 14-190 provided that subtitle A of title XXXIV of the act may be cited as the Uniform Per Student Funding Formula for Public School and Public Charter Schools Amendment Act of 2002.

Short title: Section 4001 of D.C. Law 16-192 provided that subtitle A of title IV of the act may be cited as the “Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Amendment Act of 2006”.

Short title: Section 4001 of D.C. Law 17-20 provided that subtitle A of title IV of the act may be cited as the “Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Amendment Act of 2007”.

§ 38-2902. Applicability of Formula.

(a) The Formula shall apply to operating budget appropriations for District of Columbia resident students in DCPS and Public Charter Schools of the District of Columbia. The student count to which the Formula is applied shall not include students enrolled in private institutions providing special education services paid by the District of Columbia or to nonresident students subject to the requirement of paying tuition pursuant to Chapter 3 of this title.

(b) The Formula shall apply only to operating budget appropriations from the District of Columbia General Fund for DCPS and for Public Charter Schools. It shall not apply to funds from federal or other revenue sources, or to funds appropriated to other agencies and funds of the District government.

(c) The Formula shall apply only to Public Charter Schools until the DCPS student enrollment count is verified by an independent contractor who shall perform a census on the student enrollment of the DCPS. The count shall include the information provided in § 38-1804.02(b).

(Mar. 26, 1999, D.C. Law 12-207, § 103, 45 DCR 8095.)

Prior Codifications. — 1981 Ed., § 31-2902.

Temporary Amendment of Section. — Section 2(b) of D.C. Law 13-262, rewrote this section to read as follows:

“(a) The Formula shall apply to operating budget appropriations for District of Columbia resident students in DCPS and Public Charter Schools of the District of Columbia. The student count to which the Formula is applied shall not include students enrolled in private institutions providing special education services paid by the District of Columbia or to nonresident students subject to the requirement of paying tuition pursuant to 38-302 through 38-306. For purposes of adult education only, as defined in section 102(1), the Formula shall apply to the University of the District of Columbia (‘UDC’).

“(b) The Formula shall apply only to operating budget appropriations from the District of Columbia General Fund for DCPS, for public charter schools, and for the adult education program of UDC Public Charter Schools. It shall not apply to funds from federal or other revenue sources, or to funds appropriated to other agencies and funds of the District government.”

“(c) Repealed.”

Section 4(b) of D.C. Law 13-262 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 14-6, in subsec. (a), added the following to the end: “For purposes of adult education only, as defined in section

102(1), the Formula shall apply to the University of the District of Columbia (‘UDC’).”; in subsec. (b), substituted “, for public charter schools, and for the adult education program of UDC” for “and for”; and repealed subsec. (c).

Section 4(b) of D.C. Law 14-6 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 38-2901.

For temporary (90 day) amendment of section, see § 2(b) of the Uniform Per Student Funding Formula Emergency Amendment Act of 2000 (D.C. Act 13-485, December 18, 2000, 48 DCR 20).

For temporary (90 day) amendment of section, see § 2(b) of Uniform Per Student Funding Formula For Public Schools and Public Charter Schools Emergency Amendment Act of 2001 (D.C. Act 14-18, March 16, 2001, 48 DCR 2691).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 13-262. — For Law 13-262, see notes following § 38-2901.

Legislative history of Law 14-6. — For D.C. Law 14-6, see notes following § 38-2901.

§ 38-2903. Foundation level.

The foundation level or cost of providing public education services is \$8,945 per student for fiscal year 2012 and subsequent fiscal years. The foundation level may be revised in subsequent years in accordance with provisions for inflation, revenue unavailability, and periodic review and revision of the Formula, pursuant to §§ 38-2909, 38-2910, and 38-2911.

(Mar. 26, 1999, D.C. Law 12-207, § 104, 45 DCR 8095; Oct. 1, 2002, D.C. Law 14-190, § 3402(b), 49 DCR 6968; June 5, 2003, D.C. Law 14-307, § 102(a), 49 DCR 11664; Nov. 13, 2003, D.C. Law 15-39, § 312(a), 50 DCR 5668; Dec. 7, 2004, D.C. Law 15-205, § 4002(a), 51 DCR 8441; Oct. 20, 2005, D.C. Law 16-33, § 4012(a), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 4002(b), 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 4002(b), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 4016(a), 55 DCR 7598; Sept. 24, 2010, D.C. Law 18-223, § 4022(a), 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 402(a), 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 4003(b), 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 31-2903.

Effect of amendments. — D.C. Law 14-190 substituted “\$6,555 per student for 2003” for

"\$5,500 per-student for FY 1999."

D.C. Law 14-307 substituted "\$6,419" for "\$6,555".

D.C. Law 15-39 substituted "\$6,551 per student for FY 2004" for "\$6,419 per student for 2003".

D.C. Law 15-205 substituted "\$6,903.60 per student for FY 2005 and subsequent fiscal years" for "\$6,551 per student for 2004".

D.C. Law 16-33 substituted "7,307.47 per student for FY 2006" for "\$6,903.60 per student for FY 2005".

D.C. Law 16-192 substituted "\$8,002.06 per student for FY 2007" for "\$7,307.47 per student for FY 2006".

D.C. Law 17-20 substituted "\$8,322.00 per student for fiscal year 2008" for "\$8,002.06 per student for FY 2007".

D.C. Law 17-219 substituted "\$8,770 per student for fiscal year 2009" for "\$8,322.00 per student for fiscal year 2008".

D.C. Law 18-223 substituted "\$8,945 per student for fiscal year 2011" for "\$8,770 per student for fiscal year 2009".

D.C. Law 18-370 substituted "\$8,770 per student for fiscal year 2011" for "\$8,945 per student for fiscal year 2011".

D.C. Law 19-21 substituted "\$8,945 per student for fiscal year 2012" for "\$8,770 per student for fiscal year 2011".

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 38-2901.

For temporary (90 day) amendment of section, see § 102(a) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 102(a) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 3302(b) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 102(a) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 312(a) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 312(a) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 4002(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 4002(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 4012(a) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 4022(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 402(a) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 4003(b) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 4002(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4002(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

Legislative history of Law 14-307. — Law 14-307, the “Fiscal Year 2003 Budget Support Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Legislative history of Law 18-370. — Law 18-370, the “Fiscal Year 2011 Supplemental Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second read-

ings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

Short title. — Short title of subtitle B of title III of Law 15-39: Section 311 of D.C. Law 15-39 provided that subtitle B of title III of the act may be cited as the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Amendment Act of 2003.

Short title of subtitle A of title IV of Law 15-205: Section 4001 of D.C. 15-205 provided that subtitle A of title IV of the act may be cited as the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Amendment Act of 2004.

Short title of subtitle B of title IV of Law 16-33: Section 4011 of D.C. Law 16-33 provided that subtitle B of title IV of the act may be cited as the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Amendment Act of 2005.

Short title: Section 4015 of D.C. Law 17-219 provided that subtitle H of title IV of the act may be cited as the “Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Amendment Act of 2008”.

Short title: Section 4021 of D.C. Law 18-223 provided that subtitle C of title IV of the act may be cited as the “Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Amendment Act of 2010”.

Short title: Section 401 of D.C. Law 18-370 provided that subtitle A of title IV of the act may be cited as “Funding for Public Schools and Public Charter Schools Amendment Act of 2010”.

§ 38-2904. Weightings applied to counts of students enrolled at certain grade levels.

The student counts at certain grade levels and in certain programs shall be weighted to provide an amount per student differing from the basic foundation level in accordance with the following schedule:

Grade Level	Weighting	Per Pupil Allocation in FY 2013
Pre-School	1.34	\$12,226
Pre-Kindergarten	1.30	\$11,861
Kindergarten	1.30	\$11,861
Grades 1-3	1.00	\$9,124
Grades 4-5	1.00	\$9,124
Grades 6-8	1.03	\$9,398

Grade Level	Weighting	Per Pupil Allocation in FY 2013
Grades 9-12	1.16	\$10,584
Alternative Program	1.17	\$10,675
Special education school	1.17	\$10,675
Adult	0.75	\$6,843

(Mar. 26, 1999, D.C. Law 12-207, § 105, 45 DCR 8095; Oct. 1, 2002, D.C. Law 14-190, § 3402(c), 49 DCR 6968; June 5, 2003, D.C. Law 14-307, § 102(b), 49 DCR 11664; Nov. 13, 2003, D.C. Law 15-39, § 312(b), 50 DCR 5668; Dec. 7, 2004, D.C. Law 15-205, § 4002(b), 51 DCR 8441; Oct. 20, 2005, D.C. Law 16-33, § 4012(b), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 61, 53 DCR 6794; Mar. 2, 2007, D.C. Law 16-192, § 4002(c), 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 4002(c), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 4016(b), 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 4002(a), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 4022(b), 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 402(b), 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 4003(c), 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 31-2904.

Effect of amendments. — D.C. Law 14-190 rewrote the section which had read as follows: Grade levels Weighting Total per pupil allocation in FY

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 38-2901.

For temporary (90 day) amendment of section, see § 102(b) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 102(b) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 3302(c) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 102(b) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 312(b) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 312(b) of Fiscal Year 2004 Budget

Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 4012(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 4002(a) of Fiscal Year 2010 Budget

Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see § 4002(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 4002(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 4022(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 402(b) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 4003(c) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 38-2903.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-2903.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 38-1202.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 38-821.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

Short title. — Short title: Section 4001 of D.C. Law 18-111 provided that subtitle A of title IV of the act may be cited as the “Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Amendment Act of 2009”.

§ 38-2905. Supplement to foundation level funding on the basis of the count of special education, LEP/NEP, summer school, and residential school students.

(a) In addition to grade level allocations, supplemental allocations shall be provided on the basis of the count of students identified as entitled to and receiving:

(1) Special education;

(2) English as a second language or bilingual education services;

(3) Summer school instruction for students who do not meet literacy standards pursuant to promotion policies of the DCPS or Public Charter Schools as defined in § 38-1804.01(b)(3)(B)(ii); and

(4) Extended school days.

(b) Supplemental allocations shall be provided for each student in full-time residence at a residential DCPS or Public Charter School.

(c) The supplemental allocations shall be calculated by applying weightings to the foundation level as follows:

General Education Add-ons:

Level/Program	Definition	Weighting	Per Pupil Supplemental FY 2013
LEP/NEP	Limited and non-English proficient students	0.45	\$4,106
Summer	An accelerated instructional program in the summer for students in targeted grade spans or grades pursuant to promotion policies of the District of Columbia Public Schools and public charter schools	0.17	\$1,551

Special Education Add-ons:

Level/Program	Definition	Weighting	Per Pupil Supplemental FY 2013
Level 1: Special Education	Eight hours or less per week of specialized services	0.58	\$5,292
Level 2: Special Education	More than 8 hours and less than or equal to 16 hours per school week of specialized services.	0.81	\$7,390
Level 3: Special Education	More than 16 hours and less than or equal to 24 hours per school week of specialized services	1.58	\$14,416

Level/Program	Definition	Weighting	Per Pupil Supplemental FY 2013
Level 4: Special Education	More than 24 hours per week which may include instruction in a self-contained (dedicated) special education school other than resi- dential placement	3.10	\$28,284
Special Education Capacity Fund	Weighting pro- vided in addition to special educa- tion level add-on weightings on a per student basis for each student identified as eligi- ble for special edu- cation.	0.40	\$3,650
Special Education Compliance Fund	Weighting pro- vided in addition to special educa- tion level add-on weightings on a per student basis for each student identified as eligi- ble for special edu- cation.	0.16	\$1,460
Residential	D.C. Public School or public charter school that pro- vides students with room and board in a residen- tial setting, in ad- dition to their in- structional program	1.70	\$15,511

Residential Add-ons:

Level/Program	Definition	Weighting	Per Pupil Supplemental FY 2013
Level 1: Special Education — Resi- dential	Additional funding to support the af- ter-hours level 1 special education needs of students living in a D.C. Public School or public charter school that pro- vides students with room and board in a residen- tial setting	0.374	\$3,412
Level 2: Special Education — Resi- dential	Additional funding to support the af- ter-hours level 2 special education needs of students living in a D.C. Public School or public charter school that pro- vides students with room and board in a residen- tial setting	1.360	\$12,409
Level 3: Special Education — Resi- dential	Additional funding to support the af- ter-hours level 3 special education needs of students living in a D.C. Public School or public charter school that pro- vides students with room and board in a residen- tial setting	2.941	\$26,834

Level/Program	Definition	Weighting	Per Pupil Supplemental FY 2013
Level 4: Special Education — Resi- dential	Additional funding to support the af- ter-hours level 4 special education needs of limited and non-English proficient students living in a D.C. Public School or public charter school that pro- vides students with room and board in a residen- tial setting	2.924	\$26,679
LEP/NEP — Resi- dential	Additional funding to support the af- ter-hours Limited and non-English proficiency needs of students living in a D.C. Public School or public charter school that provides students with room and board in a residen- tial setting	0.68	\$6,204

Special Education Add-ons for Students with Extended School Year (“ESY”) Indicated in Their Individualized Education Programs (“IEPs”):

Level/Program	Definition	Weighting	Per Pupil Supplemental FY 2013
Special Education Level 1 ESY	Additional funding to support the summer school/ program need for students who re- quire extended school year (ESY) services in their IEPs	0.064	\$584

Level/Program	Definition	Weighting	Per Pupil Supplemental FY 2013
Special Education Level 2 ESY	Additional funding to support the summer school/ program need for students who re- quire extended school year (ESY) services in their IEPs	0.231	\$2,108
Special Education Level 3 ESY	Additional funding to support the summer school/ program need for students who re- quire extended school year (ESY) services in their IEPs	0.500	\$4,562
Special Education Level 4 ESY	Additional funding to support the summer school/ program need for students who re- quire extended school year (ESY) services in their IEPs	0.497	\$4,535

(d) The above weightings shall be applied cumulatively in the counts of students who fall into more than one of the above categories.

(e)(1) The summer school weighting of 0.17 shall apply to DCPS and public charter school students enrolled for at least 6 weeks for the purpose described in § 38-2901(13). Summer school students enrolled for a lesser period shall be funded for the number of days in that period on a pro-rata basis.

(2) To receive funding, a DCPS or public charter school summer school program must offer at least 60 hours of instruction outside the regular school year.

(3) To receive full funding, a summer school program must offer at least 4 hours of instruction per day, 5 days a week, for 6 weeks, or its equivalent, for a total of at least 120 hours of instruction outside the regular school year for the purpose described in § 38-2901(13).

(4) The fully funded summer school weighting of 0.17 shall apply for summer school programs that meet the requirements of paragraph (3) of this subsection.

(5) Summer school programs that enroll students for less than 120 hours but more than 59 hours shall be funded on a pro-rata basis.

(f)(1) Funding for special education students enrolled in summer school whose Individual Education Plans require extended school year or summer school services shall be calculated using the add-on weights corresponding to their special education service levels as defined in subsection (c) of this section.

(2) Special education add-on weights for summer school shall apply only to summer programs that deliver the specialized services required by the Individual Education Plans of their enrolled special education students.

(g) The supplemental allocation for the extended school day shall be subject to the inclusion of its fiscal effect in an approved budget.

(Mar. 26, 1999, D.C. Law 12-207, § 106, 45 DCR 8095; Oct. 19, 2000, D.C. Law 13-172, § 2702, 47 DCR 6308; Oct. 3, 2001, D.C. Law 14-28, § 502, 48 DCR 6981; Oct. 1, 2002, D.C. Law 14-190, § 3402(d), 49 DCR 6968; June 5, 2003, D.C. Law 14-307, § 102(c), 49 DCR 11664; Nov. 13, 2003, D.C. Law 15-39, § 312(c), 50 DCR 5668; Dec. 7, 2004, D.C. Law 15-205, § 4002(c), 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-348, § 101(b), 52 DCR 1991; Oct. 20, 2005, D.C. Law 16-33, § 4012(c), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 4002(d), 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 4002(d), 54 DCR 7052; Aug. 16, 2008, D.C. Law 17-219, § 4016(c), 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 4002(b), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 4022(c), 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 402(c), 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 4003(d), 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 31-2905.

Effect of amendments. — D.C. Law 13-172 substituted “3.2” for “1.72” in the Level IV segment of the chart and added the Level V provision.

D.C. Law 14-28, in the chart in subsec. (c), substituted “up to +0.17 pro rata” and “up to \$935 pro rata” for “+0.10” and “\$550”; and added subsec. (e) relating to summer school weighting.

D.C. Law 14-190 rewrote subsec. (c) which had read:

Temporary legislation. — “(c) These supplemental allocations shall be calculated by applying weightings to the foundation level as follows: Level/Program Definition Weighting Supplemental per pupil FY

Temporary Amendment of Section. — Section 2(a) of D.C. Laws 13-067 amended subsec. (c) to read as follows:

(c) These supplemental allocations shall be calculated by applying weightings to the foundation level as follows: Level/program Definition Weighting Supplemental per pupil FY 1999 Level 1 Special Additional funding to support +0.374 \$2.057 Education the after-hours level 1 —Residential special education needs of students living in a D.C. Public School or Public Charter School that provides students

with room and board in a residential setting Level 2 Special Additional funding to support +1.36 \$7.480 Education the after-hours level 2 —Residential special education needs of students living in a D.C. Public School or Public Charter School that provides students with room and board in a residential setting Level 3 Special Additional funding to support +2.941 \$16.176 Education the after-hours level 3 —Residential special education needs of students living in a D.C. Public School or Public Charter School that provides students with room and board in a residential setting Level 4 Special Additional funding to support +2.924 \$16.082 Education the after-hours level 4 —Residential special education needs of students living in D.C. Public School or Public Charter School that provides students with room and board in a residential setting LEP Additional funding to support +0.68 \$3.740 NEP—Residential the after-hours special instructional needs of limited and non-English proficient students living in a D.C. Public School or Public Charter School that provides students with room and board in a residential setting Section 3(b) of D.C. Laws 13-067 provides that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 13-227 amended subsec. (c).

Section 5(b) of D.C. Law 13-227 provided that the act shall expire after 225 days of its having taken effect.

Section 2(c)(1) of D.C. Law 13-262, in subsec. (c), in the chart, substituted “up to +0.17 pro rata” for “+0.10” and “up to \$935 pro rata” for “\$550”. Section 2(c)(2) of that law added subsec. (e) to read as follows:

“(e) The summer school weighting of 0.17 shall apply to DCPS and public charter school students enrolled for at least 6 weeks during the summer following the regular school year. Summer school students enrolled for a lesser period shall be funded for the number of days in that period on a pro rata basis.”

Section 4(b) of D.C. Law 13-262 provided that the act shall expire after 225 days of its having taken effect.

Section 2(c) of D.C. Law 14-6, in subsec. (c), in the chart, substituted “up to +0.17 pro rata” for “+0.10” and “up to \$935 pro rata” for “\$550”, and added a new subsec. (e) to read as follows:

“(e) The summer school weighting of 0.17 shall apply to DCPS and public charter school students enrolled for at least 6 weeks during the summer following the regular school year. Summer school students enrolled for a lesser period shall be funded for the number of days in that period on a pro rata basis.”

Section 4(b) of D.C. Law 14-6 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 38-2901.

For temporary (90-day) amendment of section, see § 2(a) of Service Improvement and Fiscal Year 2000 Budget Support Special Education Student Funding Increase Non-service Nonprofit Provider Clarifying and Technical Emergency Amendment Act of 1999 (D.C. Act 13-152, December 1, 1999, 46 DCR 10395).

For temporary (90-day) amendment of section, see § 2(a) of the Service Improvement and Fiscal Year 2000 Budget Support Special Education Student Funding Increase Non-service Nonprofit Provider Clarifying and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-282, March 7, 2000, 47 DCR 2026).

For temporary (90-day) amendment of section, see § 2702 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2702 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2(a) of the Service Improvement and

Fiscal Year 2000 Budget Support Special Education Student Funding Increase Non-service Nonprofit Provider Clarifying and Technical Emergency Amendment Act of 2000 (D.C. Act 13-456, November 7, 2000, 47 DCR 9418).

For temporary (90 day) amendment of section, see § 2(c) of the Uniform Per Student Funding Formula Emergency Amendment Act of 2000 (D.C. Act 13-485, December 18, 2000, 48 DCR 20).

For temporary (90 day) amendment of section, see § 2(a) of Service Improvement and Fiscal Year 2000 Budget Support Special Education Student Funding Increase Non-service Nonprofit Provider Clarifying and Technical Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-17, March 16, 2001, 48 DCR 2687).

For temporary (90 day) amendment of section, see § 2(c) of Uniform Per Student Funding Formula For Public Schools and Public Charter Schools Emergency Amendment Act of 2001 (D.C. Act 14-18, March 16, 2001, 48 DCR 2691).

For temporary (90 day) amendment of section, see § 502 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 102(c) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 102(c) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 3302(d) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 102(c) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 312(c) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 312(c) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act

of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 4012(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 4002(d) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 4002(d) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 4002(d) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 4002(d) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 4002(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 4022(c) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 402(c) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 4003(d) of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 13-227. — Law 13-227, the “Service Improvement and Fiscal Year 2000 Budget Support Special Education Student Funding Increase Non-service Non-profit Provider Clarifying and Technical Temporary Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-858. The Bill was adopted on first and second readings on October 3, 2000, and November 8, 2000, respectively. Signed by the Mayor on December 13, 2000, it was assigned Act No. 13-502 and transmitted to both Houses of Congress for its review. D.C. Law 13-227 became effective on April 3, 2001.

Legislative history of Law 13-262. — For Law 13-262, see notes following § 38-2901.

Legislative history of Law 14-6. — For D.C. Law 14-6, see notes following § 38-2901.

Legislative history of Law 14-28. — Law 14-28, the “Fiscal Year 2002 Budget Support Act of 2001,” was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 38-2903.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 38-160.

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-2903.

Legislative history of Law 15-348. — For Law 15-348, see notes following § 38-1800.02.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Legislative history of Law 18-370. — For

history of Law 18-370, see notes under § 38-821.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

§ 38-2906. Pupil count.

(a) Annual appropriations for DCPS pursuant to the Formula shall equal the total estimated costs for the number of resident students projected to be enrolled in DCPS during the fiscal year for which the appropriation is made; provided, that for fiscal year 2008, the projected change in enrollment shall equal the average annual change in enrollment for the preceding 3 years. Beginning in fiscal year 2012, the base for the projections shall be the audited enrollment for the school year preceding the fiscal year for which the appropriation is made.

(b) Annual appropriations for public charter schools pursuant to the Formula shall equal the total estimated costs for the following:

(1) The number of resident students projected to be enrolled in all public charter schools combined during the fiscal year for which the appropriation is made, plus;

(2) The total estimated costs for the per pupil public charter school facilities allotment for the fiscal year for which the appropriation is made.

(3) Repealed.

(c) Repealed.

(d)(1) The student counts reported for October 5 of each year shall be verified by an independent contractor commissioned by the Office of the State Superintendent of Education. The independent contractor shall perform an audit on the student enrollment of each DCPS school and of each public charter school to:

(A) Verify the accuracy of the information contained in the membership report; and

(B) Identify any material weaknesses in the systems, procedures, or methodology used by the DCPS system and public charter schools in:

(i) Determining the number of students, including non-resident students, enrolled in the DCPS and in public charter schools and the number of students whose tuition for enrollment in other school systems is paid for by funds available to the District of Columbia public schools; and

(ii) Assessing and collecting fees and tuition from non-resident students.

(2) The verification process shall begin no later than one week following the day on which the count is taken. The verification shall cover the information required by § 38-1804.02, and shall be transmitted by the Mayor to the Council, the Comptroller General of the United States, and the appropriate congressional committees no later than the following December 31. Until the verification is transmitted, the unaudited October count shall serve as the basis for quarterly payments.

(e) Preliminary projections of public charter school enrollment shall be made by each eligible chartering authority for the public charter schools under

its supervision, and submitted to the Mayor by the date on which the Chancellor is required to submit his or her budget request to the Mayor. The eligible chartering authorities may submit revisions of the projections to the Mayor and the Council at any time before the Council committee with oversight responsibilities for the public education budget reports its recommendations on that budget to the Council.

(Mar. 26, 1999, D.C. Law 12-207, § 107, 45 DCR 8095; Dec. 7, 2004, D.C. Law 15-205, § 4002(d), 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-348, § 101(c), 52 DCR 1991; Oct. 20, 2005, D.C. Law 16-33, § 4012(d), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 4002(e), 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 4002(e), 54 DCR 7052; Mar. 3, 2010, D.C. Law 18-111, § 4002(c), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 4022(d), 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 31-2906.

Effect of amendments. — D.C. Law 15-205 designated the existing language as subsec. (a) and added subsec. (b).

D.C. Law 15-348 rewrote the section.

D.C. Law 16-33 repealed subsec. (b)(3), which had read as follows: “(3) Five percent of the total amount generated pursuant to paragraphs (1) and (2) of this subsection, to be put into escrow as a reserve for payments to public charter schools in case enrollment, including enrollment in special needs categories, should exceed that of the projections on which costs are based pursuant to paragraph (2) of this subsection.”

D.C. Law 16-192 rewrote subsec. (d) which had read as follows: “(d) The student counts reported for October 5 of each year shall be verified by an independent contractor commissioned by the Mayor. The independent contractor shall perform an audit on the student enrollment of each DCPS school and of each public charter school. The verification process shall begin no later than one week following the day on which the count is taken. The verification shall cover the information required by § 38-1804.02, and shall be transmitted by the Mayor to the Council, the Comptroller General of the United States, and the appropriate congressional committees no later than the following December 31. Until the verification is transmitted, the unaudited October count shall serve as the basis for the annual appropriation for the following fiscal year and for quarterly payments.”

D.C. Law 17-20 rewrote subsec. (a); and, in subsec. (d)(2), deleted “for the annual appropriation for the following fiscal year and” following “serve as the basis”. Prior to amendment, subsec. (a) read as follows: “(a) Annual appropriations for the DCPS pursuant to the Formula shall be based on the number of resident students enrolled in the DCPS on October 5 in the year preceding the fiscal year for which the

appropriation is made. This count shall be verified as provided in subsection (d) of this section.”

D.C. Law 18-111 repealed subsec. (c); in subsec. (d), substituted “Office of the State Superintendent of Education” for “State Education Office”; and, in subsec. (e), substituted “Chancellor is required to submit his or her budget request” for “Board of Education is required to submit its budget request”. Prior to repeal, subsec. (c) read as follows: “(c) Any amount escrowed pursuant to subsection (b)(3) of this section that remains at the end of each fiscal year shall revert to the General Fund.”

D.C. Law 18-223, in subsec. (a), added the second sentence; and rewrote subsec. (b)(2), which had read as follows: “(2) The annual budget of the District of Columbia Public Charter School Board and, beginning in Fiscal Year 2002, the Public Charter School Office of the Board of Education, plus;”

Temporary Amendment of Section. — Section 2(b) of D.C. Law 13-199 amended the section to read as follows:

“(a) Annual appropriations for the DCPS pursuant to the Formula shall be based on the number of resident students enrolled in the DCPS on October 5 in the year preceding the fiscal year for which the appropriation is made. This count shall be verified as provided in subsection (e) of this section.

“(b) Annual appropriations for the public charter schools pursuant to the Formula shall equal the total estimated costs for the following:

“(1) The number of resident students enrolled in all public charter schools combined as of October 5 in the year preceding the fiscal year for which the appropriation is made, and verified as provided in subsection (e) of this section, plus or minus;

“(2) The number of resident students projected to be enrolled in all public charter schools combined during the fiscal year for which the appropriation is made, and calcu-

lated as provided in subsection (f) of this section, plus;

“(3) The annual budget of the District of Columbia Public Charter School Board and, beginning in fiscal year 2002, the Public Charter School Office of the Board of Education, provided, plus;

“(4) Five percent of the total amount generated pursuant to paragraphs (1), (2) and (3) of this subsection, to be put into escrow as a reserve for payments to public charter schools in case enrollment, including enrollment in special needs categories, should exceed that of the projections on which costs are based pursuant to paragraph (2) of this subsection. Any amount remaining in the escrow at the end of each fiscal year shall revert to the General Fund.

“(c) The Mayor shall establish a committee to develop and implement, within 90 days of the effective date of the Public School Enrollment Integrity Emergency Amendment Act of 2000, a policy governing proof of District residency for the purposes of this section and the District of Columbia Nonresident Tuition Act. The committee shall be composed of the Mayor, the Chair of the District Council Committee on Education, Libraries and Recreation, the Superintendent of District of Columbia Public Schools, a representative of each of the eligible chartering authorities, and a representative of the D.C. Charter Public School Coalition. Upon establishment of a state education office, the Mayor shall transfer this function to that office.

“(d) The residency policy developed pursuant to subsection (c) of this section shall apply equally to students in DCPS and the public charter schools.

“(e) The student counts reported for October 5 of each year shall be verified by an independent contractor commissioned by the Mayor. The independent contractor shall perform a census on the student enrollment of each DCPS and of each public charter school. The verification process shall begin no later than one week following the day on which the count is taken. The verification shall cover the information required by section 2402 of the District of Columbia School Reform Act of 1995 (‘School Reform Act’), and shall be transmitted by the Mayor to the Council, the Authority, the Comptroller General of the United States, and the appropriate congressional committees no later than the following December 31. Until the verification is transmitted, the unaudited October count shall serve as the basis for the annual appropriation for the following fiscal year and for quarterly payments.

“(f) Preliminary projections of Public Charter School enrollment shall be made by each chartering authority for the Public Charter Schools under its supervision, and submitted to the Mayor by the date on which the DCPS is

required to submit its budget request to the Mayor. The chartering authorities may submit revisions of such projections to the Mayor and Council at any time before the Council committee with oversight responsibilities for the public education budget reports its recommendations on that budget to the Council.”

Section 6(b) of D.C. Law 13-199 provided that the act shall expire after 225 days of its having taken effect.

Section 2(d)(1) of D.C. Law 13-262 amended subsec. (a) to read as follows:

“(a) Annual appropriations for the DCPS pursuant to the Formula shall be based on the number of resident students enrolled in the DCPS as of October 5 in the year preceding the fiscal year for which the appropriation is made.”

Section 2(d)(2) of D.C. Law 13-262 amended subsec. (e) to read as follows:

“(e) The student counts reported for October 5 each year shall be verified by an independent contractor commissioned by the State Education Office. The independent contractor shall perform a census on the student enrollment of each DCPS and of each public charter school. The verification process shall begin no later than one week following the day on which the count is taken. The verification shall cover the information required by section 2402 of the District of Columbia School Reform Act of 1995 (‘School Reform Act’), and shall be transmitted by the State Education Office to the Mayor, the Council, the Authority, the Comptroller General of the United States, and the appropriate congressional committees no later than the following December 31. Until the verification is transmitted, the unaudited October counts shall serve as the basis for the annual appropriations for the following fiscal year and for quarterly payments to the public charter schools.”

Section 2(d)(3) of D.C. Law 13-262 added subssecs. (g), (h), and (i) to read as follows:

“(g) Annual appropriations for UDC shall include a line item restricted to adult education based on the number of resident FTE adult education students projected to be enrolled during the fiscal year.

“(h) UDC shall submit projections of its adult education enrollment as part of its annual budget submission for the following fiscal year to the Mayor. The Mayor and Council may change the projection in order to adjust the amount of the adult education appropriation to UDC.

“(i) The FTE adult education enrollment of UDC shall be verified by procedures to be established by the State Education Office. If in any given fiscal year, the enrollment is found to be less than the projected number that served as the basis for that year’s appropriation, funds attributable to the excess shall revert to the

District of Columbia's General Fund pursuant to procedures to be established by the Chief Financial Officer of the District of Columbia."

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2901.

Section 2(c) of D.C. Law 13-199 added § 31-2906a 1981 Ed. .

Section 6(b) of D.C. Law 13-199 provided that the act shall expire after 225 days of its having taken effect.

Section 2(d) of D.C. Law 14-6 amended subssecs. (a) and (e) and added subssecs. (g), (h) and (i) to read as follows:

"(a) Annual appropriations for the DCPS pursuant to the Formula shall be based on the number of resident students enrolled in the DCPS as of October 5 in the year preceding the fiscal year for which the appropriation is made."

"(e) The student counts reported for October 5 each year shall be verified by an independent contractor commissioned by the State Education Office. The independent contractor shall perform a census on the student enrollment of each DCPS and of each public charter school. The verification process shall begin no later than one week following the day on which the count is taken. The verification shall cover the information required by section 2402 of the District of Columbia School Reform Act of 1995 ('School Reform Act'), and shall be transmitted by the State Education Office to the Mayor, the Council, the Authority, the Comptroller General of the United States, and the appropriate congressional committees no later than the following December 31. Until the verification is transmitted, the unaudited October counts shall serve as the basis for the annual appropriations for the following fiscal year and for quarterly payments to the public charter schools."

"(g) Annual appropriations for UDC shall include a line item restricted to adult education based on the number of resident FTE adult education students projected to be enrolled during the fiscal year.

"(h) UDC shall submit projections of its adult education enrollment as part of its annual budget submission for the following fiscal year to the Mayor. The Mayor and Council may change the projection in order to adjust the amount of the adult education appropriation to UDC.

"(i) The FTE adult education enrollment of UDC shall be verified by procedures to be established by the State Education Office. If in any given fiscal year, the enrollment is found to be less than the projected number that served as the basis for that year's appropriation, funds attributable to the excess shall revert to the District of Columbia's General Fund pursuant

to procedures to be established by the Chief Financial Officer of the District of Columbia."

Section 4(b) of D.C. Law 14-6 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 14-38 rewrote § 38-2906 to read as follows:

"(a) Annual appropriations for the DCPS pursuant to the Formula shall be based on the number of resident students enrolled in the DCPS on October 5 in the year preceding the fiscal year for which the appropriation is made. This count shall be verified as provided in subsection (e) of this section.

"(b) Annual appropriations for the public charter schools pursuant to the Formula shall equal the total estimated costs for the following:

"(1) The number of resident students enrolled in all public charter schools combined as of October 5 in the year preceding the fiscal year for which the appropriation is made, and verified as provided in subsection (e) of this section, plus or minus;

"(2) The number of resident students projected to be enrolled in all public charter schools combined during the fiscal year for which the appropriation is made, and calculated as provided in subsection (f) of this section, plus;

"(3) The annual budget of the District of Columbia Public Charter School Board and, beginning in fiscal year 2002, the Public Charter School Office of the Board of Education, plus;

"(4) Five percent of the total amount generated pursuant to paragraphs (1), (2) and (3) of this subsection, to be put into escrow as a reserve for payments to public charter schools in case enrollment, including enrollment in special needs categories, should exceed that of the projections on which costs are based pursuant to paragraph (2) of this subsection. Any amount remaining in the escrow at the end of each fiscal year shall revert to the General Fund.

"(c) The Mayor shall establish a committee to develop and implement, within 90 days of the effective date of the Public School Enrollment Integrity Temporary Amendment Act of 2001, passed on 2nd reading on June 26, 2001 (Enrolled version of Bill 14-242), a policy governing proof of District residency for the purposes of this section and the District of Columbia Non-resident Tuition Act, approved September 8, 1970 (74 Stat. 853; D.C. Official Code § 38-302 et seq.). The committee shall be composed of the Mayor, the Chair of the District Council Committee on Education, Libraries and Recreation, the Superintendent of District of Columbia Public Schools, a representative of each of the eligible chartering authorities, and a representative of the D.C. Charter Public School Coali-

tion. Upon establishment of a state education office, the Mayor shall transfer this function to that office.

“(d) The residency policy developed pursuant to subsection (c) of this section shall apply to students in DCPS and the public charter schools.

“(e) The student counts reported for October 5 of each year shall be verified by an independent contractor commissioned by the Mayor. The independent contractor shall perform a census on the student enrollment of each DCPS and of each public charter school. The verification process shall begin no later than one week following the day on which the count is taken. The verification shall cover the information required by section 2402 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 257; D.C. Official Code § 38-1804.02) (“School Reform Act”), and shall be transmitted by the Mayor to the Council, the Authority, the Comptroller General of the United States, and the appropriate congressional committees no later than the following December 31. Until the verification is transmitted, the unaudited October count shall serve as the basis for the annual appropriation for the following fiscal year and for quarterly payments.

“(f) Preliminary projections of Public Charter School enrollment shall be made by each chartering authority for the Public Charter Schools under its supervision, and submitted to the Mayor by the date on which the DCPS is required to submit its budget request to the Mayor. The chartering authorities may submit revisions of such projections to the Mayor and Council at any time before the Council committee with oversight responsibilities for the public education budget reports its recommendations on that budget to the Council.”

Section 6(b) of D.C. Law 14-38 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 15-67 rewrote the section to read as follows:

“(a) Annual appropriations for the DCPS pursuant to the Formula shall be based on the number of resident students enrolled in the DCPS on October 5 in the year preceding the fiscal year for which the appropriation is made. This count shall be verified as provided in subsection (e) of this section.

“(b) Annual appropriations for the public charter schools pursuant to the Formula shall equal the total estimated costs for the following:

“(1) The number of resident students enrolled in all public charter schools combined as of October 5 in the year preceding the fiscal year for which the appropriation is made, and verified as provided in subsection (e) of this section, plus or minus;

“(2) The number of resident students projected to be enrolled in all public charter schools combined during the fiscal year for which the appropriation is made, and calculated as provided in subsection (f) of this section, plus;

“(3) The annual budget of the District of Columbia Public Charter School Board and, beginning in fiscal year 2002, the Public Charter School Office of the Board of Education, plus;

“(4) Five percent of the total amount generated pursuant to paragraphs (1), (2) and (3) of this subsection, to be put into escrow as a reserve for payments to public charter schools in case enrollment, including enrollment in special needs categories, should exceed that of the projections on which costs are based pursuant to paragraph (2) of this subsection. Any amount remaining in the escrow at the end of each fiscal year shall revert to the General Fund.

“(c) The Mayor shall establish a committee to develop and implement, within 90 days of the effective date of the Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2001, effective November 29, 2001 (D.C. Act 14-19; 48 DCR 11239), a policy governing proof of District residency for the purposes of this section and the District of Columbia Nonresident Tuition Act, approved September 8, 1970 (74 Stat. 853; D.C. Official Code § 38-302 et seq.). The committee shall be composed of the Mayor, the Chair of the Council Committee on Education, Libraries and Recreation, the Superintendent of District of Columbia Public Schools, a representative of each of the eligible chartering authorities, and a representative of the D.C. Charter Public School Coalition. Upon establishment of a state education office, the Mayor shall transfer this function to that office.

“(d) The residency policy developed pursuant to subsection (c) of this section shall apply to students in DCPS and the public charter schools.

“(e) The student counts reported for October 5 of each year shall be verified by an independent contractor commissioned by the Mayor. The independent contractor shall perform a census on the student enrollment of each DCPS and of each public charter school. The verification process shall begin no later than one week following the day on which the count is taken. The verification shall cover the information required by section 2402 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 257; D.C. Official Code § 38-1804.02) (“School Reform Act”), and shall be transmitted by the Mayor to the Council, the Authority, the Comptroller General of the United States, and the appropriate congressional committees no later than the following

December 31. Until the verification is transmitted, the unaudited October count shall serve as the basis for the annual appropriation for the following fiscal year and for quarterly payments.

“(f) Preliminary projections of Public Charter School enrollment shall be made by each chartering authority for the Public Charter Schools under its supervision, and submitted to the Mayor by the date on which the DCPS is required to submit its budget request to the Mayor. The chartering authorities may submit revisions of such projections to the Mayor and Council at any time before the Council committee with oversight responsibilities for the public education budget reports its recommendations on that budget to the Council.”

Section 6(b) of D.C. Law 15-67 provided that the act shall expire after 225 days of its having taken effect.

For temporary addition of chapter, see note to § 38-2901.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(b) of the Public School Enrollment Integrity Emergency Amendment Act of 2000 (D.C. Act 13-409, August 14, 2000, 47 DCR 7264).

For temporary (90-day) addition of § 31-2906a 1981 Ed., see § 2(c) of the Public School Enrollment Integrity Emergency Amendment Act of 2000 (D.C. Act 13-409, August 14, 2000, 47 DCR 7264).

For temporary (90 day) amendment of section, see § 2(b) of the Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-453, November 7, 2000, 47 DCR 9406).

For temporary (90 day) amendment of section, see § 2(d) of the Uniform Per Student Funding Formula Emergency Amendment Act of 2000 (D.C. Act 13-485, December 18, 2000, 48 DCR 20).

For temporary (90 day) amendment of section, see § 2(b) and § 2(c) of Public School Enrollment Integrity Emergency Amendment Act of 2001 (D.C. Act 14-86, July 9, 2001, 48 DCR 6373).

For temporary (90 day) amendment of section, see § 2(b) and § 2(c) of Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-192, November 29, 2001, 48 DCR 11239).

For temporary (90 day) amendment of section, see § 2(d) of Uniform Per Student Funding Formula For Public Schools and Public Charter Schools Emergency Amendment Act of 2001 (D.C. Act 14-18, March 16, 2001, 48 DCR 2691).

For temporary (90 day) addition, see § 2(c) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2003 (D.C. Act 15-174, October 6, 2003, 50 DCR 9181).

For temporary (90 day) amendment of section, see § 2(b) of Public School Enrollment Integrity Clarification Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-282, December 18, 2003, 51 DCR 191).

For temporary (90 day) amendment of section, see § 4002(d) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2(b) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2004 (D.C. Act 15-519, August 2, 2004, 51 DCR 8995).

For temporary (90 day) amendment of section, see § 4002(d) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 4012(d) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 4002(e) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 4002(e) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 4002(e) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 4002(e) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 4002(c) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 4022(d) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 13-262. — For Law 13-262, see notes following § 38-2901.

Legislative history of Law 14-6. — For D.C. Law 14-6, see notes following § 38-2901.

Legislative history of Law 15-205. — For D.C. Law 15-205, see notes following § 38-2903.

Legislative history of Law 15-348. — For Law 15-348, see notes following § 38-1800.02.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Editor's notes. — Section 405 of Chapter 4 of Division A of H.R. 5666 provided: "Notwithstanding any provision of the District of Columbia Appropriations Act, 2001, quarterly disbursements shall be calculated and paid to District of Columbia public charter schools during fiscal year 2001 in accordance with section 107a(b) of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools and Tax Conformity Clarification Amendment Act of 1998 (sec. 31-2906.1(b), D.C. Code 1981 Ed.), as amended by the Enrollment Integrity Act."

§ 38-2906.01. Payments for District of Columbia Public Schools. [Repealed].

Repealed.

(Mar. 26, 1998, D.C. Law 12-207, § 107a, as added Apr. 13, 2005, D.C. Law 15-348, § 101(d), 52 DCR 1991; Mar. 3, 2010, D.C. Law 18-111, 4002(d), 57 DCR 181.)

Temporary Addition of Section. — Section 2(c) of D.C. Law 14-38 added § 38-2906.01 to read as follows:

"§ 38-2906.01. Payments.

"(a) Except as provided in subsection (b)(2) of this section, following the enactment of an act making appropriations for the District of Columbia each fiscal year, the Mayor shall provide to DCPS the full amount of its appropriation in accordance with standard procedures for independent agencies. The Mayor shall make payments to each public charter school from the escrow account established under section 2403 of the School Reform Act to a bank designated by each school. The annual payment shall be made in the form of four quarterly payments calculated in accordance with subsections (b), (c) and (d) of this section, provided; however, that the entire annual payment for facilities pursuant to section 109 shall be included in the first payment of the fiscal year and that any payment for new charter schools pursuant to section 2403 of the School Reform Act shall also be included in the first payment of the fiscal year. The first payment shall be made no later than July 15; subsequent payments shall be made no later than October 15, January 15, and April 15.

"(b)(1) Except as provided in paragraph (2) of this subsection, each payment shall be one-fourth of each public charter school's entitlement based on its October enrollment count.

The basis of the July 15 and October 15 payments shall be the unaudited numbers contained in the reports submitted by the eligible chartering authorities under section 2402(a) of the School Reform Act. The basis of the January 15 and April 15 payments shall be the audited October enrollment numbers, provided that these amounts shall be adjusted in accordance with the provisions of subsection (c) of this section.

"(2) The payment of October 15, 2000 shall be 50% of each public charter school's entitlement based on its unaudited October 5 enrollment count.

"(c) Payments shall not be reduced or delayed pending the conduct and results of the audit prescribed by section 107(e). If the audit finds that the number of verified resident students in enrollment at any public charter school differs from that on which its July 15 and October 15 payments were based, the Mayor shall recalculate the appropriate amount of subsequent payments accordingly, adjusting them by the amount of the discrepancy.

"(d) Payments for special education, limited English proficient students, and other add-on components of the Funding Formula shall be included in the quarterly payments to public charter schools. Payments shall reflect one-quarter of the annual per student amount for each add-on; provided, however, that add-ons for special education and limited English profi-

cient students shall be added on a pro rata basis from the date on which a public charter school begins to provide add-on services for such students.

“(e) Prior to or concurrent with any payment made pursuant to this section, the Chief Financial Officer of the District of Columbia shall provide to each public charter school an accounting indicating what the payment is for and how it was calculated.”

Section 6(b) of D.C. Law 14-38 provided that the act shall expire after 225 days of its having taken effect.

Section 2(c) of D.C. Law 15-67 added a section to read as follows:

“Sec. 107a. Payments.

“(a) Except as provided in subsection (b)(2) of this section, following the enactment of an act making appropriations for the District of Columbia each fiscal year, the Mayor shall provide to DCPS the full amount of its appropriation in accordance with standard procedures for independent agencies. The Mayor shall make payments to each public charter school from the escrow account established under section 2403 of the School Reform Act to a bank designated by each school. The annual payment shall be made in the form of four equal quarterly payments calculated in accordance with subsections (b), (c) and (d) of this section, provided; however, that the entire annual payment for facilities pursuant to section 109 shall be included in the first payment of the fiscal year and that any payment for new charter schools pursuant to section 2403 of the School Reform Act shall also be included in the first payment of the fiscal year. The first payment shall be made no later than July 15; subsequent payments shall be made no later than October 15, January 15, and April 15.

“(b)(1) Except as provided in paragraph (2) of this subsection, each payment shall be one-fourth of each public charter school's entitlement based on its October enrollment count. The basis of the July 15 and October 15 payments shall be the unaudited numbers contained in the reports submitted by the eligible chartering authorities under section 2402(a) of the School Reform Act. The basis of the January 15 and April 15 payments shall be the audited October enrollment numbers, provided that these amounts shall be adjusted in accordance with the provisions of subsection (c) of this section.

“(2) The payment of October 15, 2000 shall be 50% of each public charter school's entitlement based on its unaudited October 5 enrollment count.

“(c) Payments shall not be reduced or delayed pending the conduct and results of the audit prescribed by section 107(e). If the audit finds that the number of verified resident students in enrollment at any public charter school differs

from that on which its July 15 and October 15 payments were based, the Mayor shall recalculate the appropriate amount of subsequent payments accordingly, adjusting them by the amount of the discrepancy.

“(d) Payments for special education, limited English proficient students, and other add-on components of the Funding Formula shall be included in the quarterly payments to public charter schools. Payments shall reflect one-quarter of the annual per student amount for each add-on; provided, however, that add-ons for special education and limited English proficient students shall be added on a pro rata basis from the date on which a public charter school begins to provide add-on services for such students.

“(e) Prior to or concurrent with any payment made pursuant to this section, the Chief Financial Officer of the District of Columbia shall provide to each public charter school an accounting indicating what the payment is for and how it was calculated.”

Section 6(b) of D.C. Law 15-67 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2(e) of the Uniform Per Student Funding Formula Emergency Amendment Act of 2000 (D.C. Act 13-485, December 18, 2000, 48 DCR 20).

For temporary (90 day) addition of section 38-2906.01, see § 2(e) of Uniform Per Student Funding Formula For Public Schools and Public Charter Schools Emergency Amendment Act of 2001 (D.C. Act 14-18, March 16, 2001, 48 DCR 2691).

For temporary (90 day) addition of section, see § 2 of the Public School Enrollment Integrity Emergency Amendment Act of 2003 (D.C. Act 15-139, July 29, 2003, 50 DCR 6866).

For temporary (90 day) addition, see § 2(c) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2003 (D.C. Act 15-174, October 6, 2003, 50 DCR 9181).

For temporary (90 day) amendment of section, see § 2(b) of Public School Enrollment Integrity Clarification Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-282, December 18, 2003, 51 DCR 191).

For temporary (90 day) addition, see § 2(c) of Public School Enrollment Integrity Clarification Emergency Amendment Act of 2004 (D.C. Act 15-519, August 2, 2004, 51 DCR 8995).

For temporary (90 day) repeal, see § 4002(d) of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August

Legislative history of Law 14-38. — For Law 14-38, see notes following § 38-1800.02.

Legislative history of Law 15-67. — For Law 15-67, see notes following § 38-1800.02.

Legislative history of Law 15-348. — For Law 15-348, see notes following § 38-1800.02.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

§ 38-2906.02. Payments to public charter schools.

(a) The Mayor shall make payments to each public charter school from the escrow account established under § 38-1804.03 to a bank designated by each school. The annual payment shall be made in the form of 4 equal quarterly payments calculated in accordance with this section; provided, that the entire annual payment for facilities calculated pursuant to § 38-2908 shall be included in the first payment of the fiscal year and that any payment for new charter schools determined pursuant to § 38-1804.03 shall also be included in the first payment of the fiscal year. The first payment shall be made no later than July 15. Subsequent payments shall be made no later than October 15, January 15, and April 15.

(b) Each payment shall be one-fourth of each public charter school's entitlement, determined as follows:

(1) The basis of the July 15 payment to a public charter school shall be the estimate used in the June 30 quarterly reports submitted by the eligible chartering authorities pursuant to § 38-1804.02(a).

(2) The basis of the October 25 and January 15 payments shall be the unaudited October enrollment numbers for that school contained in the reports submitted by the eligible chartering authorities on October 5.

(3) The basis of the April 15 payment shall be the audited October enrollment numbers; provided, that these amounts shall be adjusted in accordance with the provisions of subsection (c) of this section.

(c) Payments shall not be reduced or delayed pending the conduct and results of the audit prescribed by § 38-2906(d). If the audit finds that the number of verified resident students enrolled at any public charter school differs from that on which its July 15 and October 15 payments were based, the Mayor shall recalculate the appropriate amount of subsequent payments accordingly, adjusting them by the amount of the discrepancy.

(d) Payments for special education, limited English proficient students, and other add-on components of the Funding Formula shall be included in the quarterly payments to public charter schools. Payments shall reflect one-quarter of the annual per student amount for each add-on; provided, that add-ons for special education and limited English proficient students shall be added on a pro-rata basis from the date on which a public charter school begins to provide add-on services for such students.

(e) Prior to, or concurrent with, any payment made pursuant to this section, the Chief Financial Officer of the District of Columbia shall provide to each public charter school an accounting indicating the purpose of the payment and how the payment was calculated.

(f) During any period in which payments to public charter schools become due on a date when District funding is authorized pursuant to a continuing resolution rather than pursuant to an appropriations act, the Chief Financial Officer of the District of Columbia shall provide payments for new public charter schools and increased enrollments in other public charter schools from any unexpended and unobligated funds.

(g) Upon application to the Chief Financial Officer of the District of Columbia, charter schools offering alternative education or special education services may receive payment for eligible students enrolling after October 5, on a pro-rata basis from the date on which the school begins to provide services to that student; provided, that the student represents a net increase to the school's enrollment as of October 5. The pro-rata payments for special education students enrolling after October 5 based on the public charter school's predetermined enrollment schedule shall be disbursed in addition to the quarterly payments at the discretion of the Chief Financial Officer.

(h) If an eligible charter authority proposes to revoke the charter of a public charter school as described in § 38-1802.13 during any period prior to a July 15 payment, consistent with this section, the Office of the State Superintendent of Education ("OSSE") shall hold the July 15 payment in escrow pending a final decision by the eligible charter authority. Upon a final revocation decision, the Mayor shall have no obligation to release the escrow funds. The OSSE, in its discretion, may approve the distribution of the July 15 payment as it considers appropriate.

(Mar. 26, 1998, D.C. Law 12-207, § 107b, as added Apr. 13, 2005, D.C. Law 15-348, § 101(d), 52 DCR 1991; Oct. 20, 2005, D.C. Law 16-33, § 4012(e), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 4002(f), 53 DCR 6899; Sept. 14, 2011, D.C. Law 19-21, § 4032, 58)

Effect of amendments. — D.C. Law 16-33, rewrote subsec. (b).

D.C. Law 16-192 rewrote subsec. (b); and added subsecs. (f) and (g).

D.C. Law 19-21 added subsec. (h).

Emergency legislation. — For temporary (90 day) amendment of section, see § 4012(e) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 4002(f) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 4002(f) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 4002(f) of Fiscal Year 2007 Budget

Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 4032 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 15-348. — For Law 15-348, see notes following § 38-1800.02.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 38-1306.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 38-271.01.

Short title. — Short title: Section 4031 of D.C. Law 19-21 provided that subtitle D of title IV of the act may be cited as "Charter School Payment Advance Amendment Act of 2011".

§ 38-2907. Education costs excluded from the Formula payments.

(a) The cost of transportation for students with disabilities, tuition payments for private placements for students with disabilities, and the cost of performing state education functions for the District of Columbia are not covered by the Formula and shall be allocated by the Mayor and Council to the Office of the State Superintendent of Education ("OSSE"), or to another agency

as considered appropriate by the Mayor, in addition to the amount generated by the Formula.

(b) The OSSE, as the state education agency for the District of Columbia, shall perform all state education functions for public charter schools and for DCPS, which are local education agencies.

(Mar. 26, 1999, D.C. Law 12-207, § 108, 45 DCR 8095; Apr. 24, 2007, D.C. Law 16-305, § 57(b), 53 DCR 6198; Mar. 25, 2009, D.C. Law 17-353, § 172(d), 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, § 4002(e), 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 31-2907.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted “students with disabilities” for “handicapped students”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (a).

D.C. Law 18-111 rewrote the section.

Temporary Addition of Section. — See Historical and Statutory Notes following § 31-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 31-2901.

For temporary (90 day) amendment of section, see § 4002(e) of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) amendment of section, see § 4002(e) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 4002(e) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 31-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 31-2901.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 38-911.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

§ 38-2908. Facilities allowance for Public Charter Schools.

(a) Except as provided in subsections (b) and (b-1) of this section, the fiscal year facility allowance for Public Charter Schools shall be determined as follows: DCPS approved capital budget shall be divided by the previous school year (“SY”) DCPS total pupil count, as defined in § 38-2906, to determine the DCPS per pupil facility cost.

(b) For fiscal year 2004 through fiscal year 2008, the facility allowance for Public Charter Schools shall be determined as described in subsection (a) of this section, except that the DCPS per pupil facility cost for all previous years shall be averaged with the current year’s DCPS per pupil facility cost to determine the Public Charter School per pupil facility allowance. The facility allowance shall then be multiplied by the number of students estimated to be attending each Public Charter School to determine the actual facility allowance payments to be received by each Public Charter School. For each year after FY 2004, this “moving average” shall only include the most recent 5-year’s DCPS per pupil facility cost.

(b-1) For fiscal year 2009 and succeeding fiscal years, the per pupil facility allowance for Public Charter Schools shall be \$3000. The facility allowance shall then be multiplied by the number of students estimated to be attending

each Public Charter School to determine the actual facility allowance payments to be received by each Public Charter School.

(c) The entire annual payment for facilities shall be included in the first payment of the fiscal year and that any payment for new charter schools shall also be included in the first payment of the fiscal year.

(d) For DCPS or Public Charter Schools that provide students with room and board in a residential setting, in addition to their instructional program, the facilities allowance determined pursuant to this section shall be multiplied by 2.7 for those students in residence at the school.

(e) The facilities allowance shall only apply to students receiving instruction at a Public Charter School educational facility or as otherwise approved by the Office of the State Superintendent of Education.

(Mar. 26, 1999, D.C. Law 12-207, § 109, 45 DCR 8095; Oct. 1, 2002, D.C. Law 14-190, § 3402(e), 49 DCR 6968; Mar. 2, 2007, D.C. Law 16-192, § 4002(g), 53 DCR 6899; Aug. 16, 2008, D.C. Law 17-219, § 4016(d), 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 4011, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 4022(e), 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 31-2908.

Effect of amendments. — D.C. Law 14-190 rewrote the section.

D.C. Law 16-192 added subsec. (d).

D.C. Law 17-219, in subsec. (a), inserted "Except as provided in subsections (b) and (b-1) of this section,"; in subsections (b), substituted "fiscal year 2004 through fiscal year 2008" for "FY 2004 and succeeding fiscal years"; and added subsections (b-1) and (e).

D.C. Law 18-111, in subsec. (b-1), substituted "\$2,800" for "\$3,109".

D.C. Law 18-223, in subsec. (b-1), substituted "\$3000" for "\$2800".

Temporary Amendment of Section. — Section 2(a) of D.C. Laws 13-067 added subsec. (f) to read as follows:

"(f) For DCPS or Public Charter Schools that provide students with room and board in a residential setting, in addition to their instructional program, the facilities allowance determined pursuant to this section shall be multiplied by 2.7 for those students in residence at the school."

Section 3(b) of D.C. Laws 13-067 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 13-227 added subsec. (f) to read as follows:

"(f) For DCPS or Public Charter Schools that provide students with room and board in a residential setting, in addition to their instructional program, the facilities allowance determined pursuant to this section shall be multiplied by 2.7 for those students in residence at the school."

Section 5(b) of D.C. Law 13-227 provided that

the act shall expire after 225 days of its having taken effect.

Section 2(f) of D.C. Law 13-262 amended this section to read as follows:

"(a)(1) The annual facility allowance for Public Charter Schools shall be determined as follows: Starting with FY 1998, the total funds being estimated from all sources for each year's DCPS capital improvement program shall be divided by the October DCPS pupil count, as defined in section 107, for the same fiscal year to determine the DCPS per pupil facility cost for that year.

"(2) Each year's DCPS per pupil facility cost shall be averaged with those of prior years to calculate a moving average until a total of 5 years are included in the calculations. Thereafter, the calculations shall include the most recent 5 years. This moving average shall constitute the per pupil facility allowance for the succeeding fiscal year, to be paid as prescribed in paragraph (1) of this subsection.

"(b) If supplemental funds for the capital improvement program are received by DCPS during any given fiscal year, the total of those supplemental funds shall be added to that fiscal year's capital improvement program in determining that year's DCPS per pupil facility cost in the next fiscal year's calculations of the moving average."

Section 4(b) of D.C. Law 13-262 provided that the act shall expire after 225 days of its having taken effect.

Section 2(f) of D.C. Law 14-6 amended this section to read as follows:

"(a)(1) The annual facility allowance for public charter schools shall be determined as follows: Starting with FY 1998, the total funds

being estimated from all sources for each year's DCPS capital improvement program shall be divided by the October DCPS pupil count, as defined in section 107, for the same fiscal year to determine the DCPS per pupil facility cost for that year.

"(2) Each year's DCPS per pupil facility cost shall be averaged with those of prior years to calculate a moving average until a total of 5 years are included in the calculations. Thereafter, the calculations shall include the most recent 5 years. This moving average shall constitute the per pupil facility allowance for the succeeding fiscal year, to be paid as prescribed in this subsection.

"(b) If supplemental funds for the capital improvement program are received by DCPS during any given fiscal year, the total of those supplemental funds shall be added to that fiscal year's capital improvement program in determining that year's DCPS per pupil facility cost in the next fiscal year's calculations of the moving average."

Section 4(b) of D.C. Law 14-6 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 38-2901.

For temporary (90-day) amendment of section, see § 2(a) of Service Improvement and Fiscal Year 2000 Budget Support Special Education Student Funding Increase Non-service Nonprofit Provider Clarifying and Technical Emergency Amendment Act of 1999 (D.C. Act 13-152, December 1, 1999, 46 DCR 10395).

For temporary (90-day) amendment of section, see § 2(b) of the Service Improvement and Fiscal Year 2000 Budget Support Special Education Student Funding Increase Non-service Nonprofit Provider Clarifying and Technical Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-282, March 7, 2000, 47 DCR 2026).

For temporary (90 day) amendment of section, see § 2(b) of the Service Improvement and Fiscal Year 2000 Budget Support Special Education Student Funding Increase Non-service Nonprofit Provider Clarifying and Technical Emergency Amendment Act of 2000 (D.C. Act 13-456, November 7, 2000, 47 DCR 9418).

For temporary (90 day) amendment of section, see § 2(f) of the Uniform Per Student Funding Formula Emergency Amendment Act of 2000 (D.C. Act 13-485, December 18, 2000, 48 DCR 20).

For temporary (90 day) amendment of section, see § 2(b) of Service Improvement and Fiscal Year 2000 Budget Support Special Education Student Funding Increase Non-service Nonprofit Provider Clarifying and Technical

Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-17, March 16, 2001, 48 DCR 2687).

For temporary (90 day) amendment of section, see § 2(f) of Uniform Per Student Funding Formula For Public Schools and Public Charter Schools Emergency Amendment Act of 2001 (D.C. Act 14-18, March 16, 2001, 48 DCR 2691).

For temporary (90 day) amendment of section, see § 3302(e) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 4002(g) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 4002(g) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 4002(g) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 4011 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 4011 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 4022(e) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 13-227. — For Law 13-227, see notes following § 38-2905.

Legislative history of Law 13-262. — For Law 13-262, see notes following § 38-2901.

Legislative history of Law 14-6. — For D.C. Law 14-6, see notes following § 38-2901.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 38-1208.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Short title. — Short title: Section 4010 of D.C. Law 18-111 provided that subtitle B of title IV of the act may be cited as the “Charter

School Facilities Allotment Reform Amendment Act of 2009”.

§ 38-2909. Cost of education adjustment. [Repealed].

Repealed.

(Mar. 26, 1999, D.C. Law 12-207, § 110, 45 DCR 8095; Mar. 3, 2010, D.C. Law 18-111, 4002(h), 57 DCR 181.)

Prior Codifications. — 1981 Ed., § 31-2909.

Temporary Addition of Section. — See Historical and Statutory Notes following § 31-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 38-2901.

For temporary (90 day) repeal, see § 4002(h) of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) repeal, see § 4002(h) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) repeal, see § 4002(f) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

§ 38-2910. Procedure for adjusting appropriation in case of revenue unavailability.

If in any given fiscal year the Council finds that full funding of the Formula from local revenues is inconsistent with legal requirements for a balanced budget, the following shall apply:

(1) The Council shall reduce the foundation level accordingly, and set a schedule for achieving or restoring full funding, however, funding shall not be less than 95% of the previous fiscal year’s funding; and

(2) The Mayor, Council, Superintendent/CEO, and Board of Education shall use their best efforts to obtain temporary supplemental funding from other revenue sources.

(Mar. 26, 1999, D.C. Law 12-207, § 111, 45 DCR 8095; Mar. 2, 2007, D.C. Law 16-192, § 4002(h), 53 DCR 6899.)

Prior Codifications. — 1981 Ed., § 31-2910.

Effect of amendments. — D.C. Law 16-192 rewrote par. (2) which had read as follows: “(2) The Mayor, Council, Superintendent/CEO, Board of Education and the Emergency Transitional Education Board of Trustees shall use their best efforts to obtain temporary supplemental funding from other revenue sources.”

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 38-2901.

For temporary (90 day) amendment of section, see § 4002(h) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 4002(h) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 4002(h) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For

legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

§ 38-2911. Periodic revision of Formula.

(a) The Mayor and Council, in consultation with representatives of DCPS and of the Public Charter Schools, shall review and revise this Formula within 2 years of its establishment, within 2 years after this initial review and revision, and once every 4 years subsequently. Revisions shall be based upon information and data including study of actual costs of education in the District of Columbia, consideration of performance incentives created by the Formula in practice, research in education and education finance, and public comment.

(b) The study of actual costs of education pursuant to subsection (a) of this section shall include but not be limited to the following:

(1) The relation of funding levels to student outcomes;

(2) Maintenance of effort in specified areas of focus to promote continuity of effective practices;

(3) Improved techniques for determining specific levels of funding needed to provide adequate special education services; and

(4) Improved measures of change in the cost of education.

(c) The State Education Office shall make recommendations to revise and review the formula as described in subsection (a) of this section for submission to the Mayor and the Council.

(Mar. 26, 1999, D.C. Law 12-207, § 112, 45 DCR 8095; Mar. 2, 2007, D.C. Law 16-192, § 4002(i), 53 DCR 6899.)

Prior Codifications. — 1981 Ed., § 31-2911.

Effect of amendments. — D.C. Law 16-192 added subsec. (c).

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 38-2901.

For temporary (90 day) amendment of section, see § 4002(i) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 4002(i) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 4002(i) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

§ 38-2912. Variations in per pupil allocations.

Variations from uniformity in the Formula are not intended as an exercise of the Council's line-item authority over the DCPS budget. Allocations by the

count of students in certain grade levels and programs are intended only to generate total appropriation amounts on a per student basis.

(Mar. 26, 1999, D.C. Law 12-207, § 113, 45 DCR 8095.)

Prior Codifications. — 1981 Ed., § 31-2912.

Temporary Amendment of Section. — Section 2 of D.C. Laws 13-087 added the School Proximity Traffic Calming Temporary Act of 1999 to read as follows:

“(a) The Mayor is authorized to install traffic control devices, as deemed necessary, after completing an investigation of school zones.

“(b) The Mayor shall, when conducting an investigation, consider the number of persons who have been hit by a vehicle, bicycle, or motorcycle in a school zone, the likelihood of these accidents occurring in the future and the volume of traffic.

“(c) The District of Columbia Public Schools and the Metropolitan Police Department shall submit monthly statistical reports to the Mayor which shall include:

“(1) The number of persons who were hit by a vehicle, bicycle or motorcycle in and around school zones; and

“(2) The type of injuries suffered.

“(d) The information in subsection (c) of this section shall be made available, within 15 days from the date of request from the Mayor.

“(e) School zones shall have a speed limit posted at 15 miles per hour and signs erected warning of the existence of children. For those school zones that have a traffic control device, signs shall be erected warning of the existence of these devices.

“(f) At least one crossing guard shall be placed at elementary schools. Crossing guards shall be placed at middle or junior high schools, and high schools where deemed necessary by the Metropolitan Police Department.

“(g) Traffic control devices, when constructed and posted pursuant to this section, shall not be deemed obstructions of the road or street. No action shall be brought on behalf of any party

against the District for damages caused by a speed control device.

“(h) The Mayor shall submit a report to the Council which shall include the findings of the investigation and the type of traffic control devices that should be installed at all school zones within 60 days from the effective date of this act.

“(i) For purposes of this act, “traffic control devices” includes traffic signals, flashing red and yellow signals, stop signs, signs that warn of the existence of children, markers, speed humps or bumps, rumble strips, or signs that reduce the speed limit.”

Section 4(b) of D.C. Laws 13-087 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — See Historical and Statutory Notes following § 38-2901.

Emergency legislation. — For temporary addition of chapter, see note to § 38-2901.

For temporary (90-day) addition of section, see § 2 of the School Proximity Traffic Calming Emergency Act of 1999 (D.C. Act 13-195, December 1, 1999, 46 DCR 10437).

For temporary (90-day) addition of section, see § 2 of the School Proximity Traffic Calming Congressional Review Emergency Act of 2000 (D.C. Act 13-279, March 7, 2000, 47 DCR 2209).

For temporary (90 day) addition of § 38-2951, see § 3372 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 12-180. — For legislative history of D.C. Law 12-180, see Historical and Statutory Notes following § 38-2901.

Legislative history of Law 12-207. — For legislative history of D.C. Law 12-207, see Historical and Statutory Notes following § 38-2901.

§ 38-2913. Services.

Beginning in fiscal year 2013, services provided by District of Columbia government agencies to public schools shall be provided on an equal basis to the District of Columbia Public Schools and public charter schools. Any services that are funded apart from the Uniform per Student Funding Formula shall not also be funded by the Uniform Per Student Funding Formula.

(Mar. 26, 1999, D.C. Law 12-207, § 115, as added Sept. 24, 2010, D.C. Law 18-223, § 4062, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 402(d), 58 DCR 1008.)

Effect of amendments. — D.C. Law 18-370 substituted “2013” for “2012”.

Emergency legislation. — For temporary (90 day) additions, see § 4062 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 402(d) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 38-821.02.

Short title. — Short title: Section 4061 of D.C. Law 18-223 provided that subtitle G of title IV of the act may be cited as the “Public Education Finance Reform Commission Establishment Amendment Act of 2010”.

§ 38-2914. Public Education Finance Reform Commission.

(a)(1) An independent organization shall be retained by the Mayor of the District of Columbia to convene and staff an independent commission on public education finance reform in the District of Columbia, to be known as the Public Education Finance Reform Commission (“Commission”).

(2) The Commission shall:

(A) Be conducted according to the standard procedures of the independent organization, with full cooperation of the:

- (i) Council;
- (ii) Mayor;
- (iii) Chancellor;
- (iv) State Superintendent of Education; and
- (v) Other government personnel;

(B) Establish a process by which the public may participate in providing information, opinion, and reaction to Commission proceedings and reports; and

(C) Post all documents that it produces on the Internet.

(3) All Commission meetings and deliberations shall be open to the public.

(b) The Commission shall study and report on revisions to the Uniform Per Student Funding Formula with regard to improvements in:

- (1) Equity;
- (2) Adequacy;
- (3) Affordability; and
- (4) Transparency, including:

(A) The maintenance of uniformity in funding between District of Columbia Public Schools (“DCPS”) and public charter schools, taking into account services provided without charge by other District of Columbia agencies;

(B) The determination of the funding level needed by DCPS and the public charter schools to provide educational services sufficient to enable public school students, including special education students and English-language learners, to meet the academic standards of the District of Columbia;

(C) The fiscal ability of the District of Columbia government to provide the necessary funding level; and

(D) The presentation of the Uniform Per Student Funding Formula and calculations made pursuant to it so that the public may clearly understand the basis of the calculations and related budget appropriations.

(c)(1) Prior to the delivery of final recommendations, the Commission shall provide to the Mayor and Council an equity report detailing for fiscal years 2009 and 2010:

(2) The equity report shall include:

(A) An analysis of the impact of these payments, transfers, in-kind services, and reprogramming on the uniformity of funding for DCPS and public charter schools;

(B) Recommendations for increasing uniformity in the 2013 budget and succeeding years; and

(C) Weaknesses in the Uniform Per Student Funding Formula Act or in its implementation, if any, that interfere with uniformity of funding.

(d) No later than November 30, 2011, the Commission shall provide the Mayor and Council with a final report and its recommendations for consideration in the development of the fiscal year 2013 budget.

(Mar. 26, 1999, D.C. Law 12-207, § 116, as added Sept. 24, 2010, D.C. Law 18-223, § 4062, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 402(e), 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 7013, 58 DCR 6226.)

Effect of amendments. — D.C. Law 18-370, in subsec. (a)(1), substituted “Mayor” for “Council”; rewrote subsec. (c)(1); and, in subsec. (d), substituted “September 30” for “June 30”. Prior to amendment, subsec. (c)(1) read as follows: “(c)(1) No later than January 31, 2011, the Commission shall provide to the Council an equity report detailing for fiscal years 2009 and 2010:”

D.C. Law 19-21, in subsec. (c)(1), substituted “Prior to the delivery of final recommendations, the Commission shall provide to the Mayor and Council” for “No later than January 31, 2011, the Commission shall provide to the Council”; and, in subsec. (d), substituted “November 30, 2011” for “June 30, 2011”.

Emergency legislation. — For temporary (90 day) additions, see § 4062 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 402(e) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 7013 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 38-103.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 38-821.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 47-305.02.

Subchapter II. TANF Fund Sharing.

§ 38-2931. Distribution of TANF or Health and Human Services funds for after-school programs.

The District of Columbia Public Schools (“DCPS”) shall distribute any TANF or Health and Human Services funds that it receives that are designated for after-school programs, on an equitable basis, to DCPS and Public Charter Schools serving students with after-school programs, that receive funding based on the Uniformed Per Pupil Funding Formula.

(Oct. 1, 2002, D.C. Law 14-190, § 3472, 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 38-2951.

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

CHAPTER 29A. FINANCIAL MANAGEMENT.

Sec.	Sec.
38-2951. Financial Management Reform Plan.	38-2952. Financial Management Task Force.

§ 38-2951. Financial Management Reform Plan.

(a) The Superintendent of the public schools shall develop a Financial Management Reform Plan ("Reform Plan") which shall include the following:

- (1) Measurable goals;
- (2) Timeline for deliverables;
- (3) Roles and responsibilities of all District agencies that provide financial management related services;
- (4) Proposed statutory and regulatory amendments to approve the budget process;
- (5) Targeted savings activities, and reallocations within the DCPS budget, for the next 2 fiscal years; and
- (6) Review and input from members of the Financial Management Task Force.

(b) The Superintendent shall submit the Reform Plan to the Board of Education for its approval.

(Dec. 7, 2004, D.C. Law 15-211, § 4, 51 DCR 8805.)

Legislative history of Law 15-211. — Law 15-211, the "Board of Education Continuity and Transition Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-714, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 29, 2004, and July 13, 2004, respectively.

Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-498 and transmitted to both Houses of Congress for its review. D.C. Law 15-211 became effective on December 7, 2004.

Editor's notes. — Former § 38-2951 has been recodified as § 38-2931.

§ 38-2952. Financial Management Task Force.

(a) There is established a Financial Management Task Force ("Task Force") with the purpose of serving as a collaborative body of District agencies that will support and assist in implementing financial management reform within the District of Columbia Public Schools.

(b) Specific functions of the Task Force shall include the following:

- (1) Within 60 days of the approval of the Board of Education pursuant to § 38-2951(b), adopt by a majority vote the Reform Plan developed pursuant to § 38-2951(a);
- (2) Convene monthly, or more frequently as deemed necessary and appropriate, to report on the progress of, identify obstacles to, and recommend amendments to, the Reform Plan;
- (3) Identify ways that better coordinate and improve financial management service delivery; and
- (4) Assist with the implementation of the Reform Plan to ensure that the Reform Plan is executed in an appropriate and timely manner.

(c)(1) The Task Force shall be comprised of the following 8 voting members, or designees thereof, as follows:

- (A) The Mayor of the District of Columbia;
- (B) The Chair of the Committee on Education, Libraries and Recreation of the Council;
- (C) The Chair of Committee of Finance and Revenue of the Council;
- (D) The President of the Board of Education;
- (E) The District of Columbia Public Schools Superintendent;
- (F) The State Education Officer of the District of Columbia;
- (G) The Chief Financial Officer for the District of Columbia; and
- (H) The Chief Financial Officer for the District of Columbia Public Schools.

(2) The following persons shall serve as advisory, nonvoting members of the Task Force:

- (A) All the members of the Council's Committee on Education, Libraries and Recreation;
- (B) The department head or designee of the Office of Financial Management;
- (C) The department head or designee of the Committee on Financial Management and Student Services for the Board of Education;
- (D) The department head or designee of the Office of the Attorney General; and
- (E) The representative of the State Advisory Panel on Financial Management in the District of Columbia;

(3) The Task Force shall be co-chaired by the Mayor, the Chair of the Committee on Education, Libraries and Recreation of the Council, and the President of the Board of Education.

(4) The Director of the State Education Office shall provide staffing for the Task Force.

(d) The voting members of the Task Force shall adopt and sign a Memorandum of Understanding binding their respective agencies regarding the implementation of the Reform Plan.

(e) The Task Force shall terminate upon the full execution of the Memorandum of Understanding referred in subsection (d) of this section.

(Dec. 7, 2004, D.C. Law 15-211, § 5, 51 DCR 8805.)

Legislative history of Law 15-211. — For D.C. Law 15-211, see notes following § 38-2951.

CHAPTER 29B. PUBLIC SCHOOL CAPITAL SPENDING.

Subchapter I. Public School Capital Improvement Fund

Subchapter III. Public School Capital Improvement Expenditure Accountability

- Sec.
38-2971.01. Establishment of the Public School Capital Improvement Fund.
38-2971.02. [Repealed].
38-2971.03. Use of Fund.
38-2971.04. Facilities management organizational strategy.

- Sec.
38-2973.01. Establishment of Public School Modernization Advisory Committee.
38-2973.02. Public School Modernization Advisory Committee functions and coordination with the Director of the Office of Public Education Facilities Modernization.
38-2973.03. [Repealed].
38-2973.04. Compliance with District, local, small and disadvantaged businesses contracting requirements.
38-2973.05. Audit of capital improvement projects.

Subchapter II. Fiscal Effect

- 38-2972.01. Funding the fiscal effect of subchapter I of this chapter.

Subchapter I. Public School Capital Improvement Fund.

§ 38-2971.01. Establishment of the Public School Capital Improvement Fund.

(a) There is established a nonlapsing special revenue fund to be known as the Public School Capital Improvement Fund ("Fund"), which shall be separate from the General Fund of the District of Columbia and which shall be used to provide a revenue source for the Office of Public Education Facilities Modernization.

(b) The Chief Financial Officer shall deposit into the Fund:

(1) All revenue specifically identified by any provision of District of Columbia law to be paid into the Fund; and

(2) Any federal grant or other federal funds that may be used for the purposes of the Fund.

(c) Funds deposited in the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in this chapter, subject to authorization by Congress in an appropriations act.

(d) Beginning on October 1, 2006, the Chief Financial Officer shall transfer any funds deposited in the Fund to the Office of Public Education Facilities Modernization, subject to the requirements of § 38-2971.03.

(e) The appropriation of local funds to, or the existence of retained funds in, the Public School Capital Improvement Fund shall not replace local funding that otherwise would be directed to the capital budget for the Office of Public Education Facilities Modernization.

(June 8, 2006, D.C. Law 16-123, § 101, 53 DCR 2843; June 12, 2007, D.C. Law 17-9, § 1010(a), 54 DCR 4102.)

Effect of amendments. — D.C. Law 17-9 rewrote subsecs. (a), (d), and (e).

Legislative history of Law 16-123. — Law 16-123, the "School Modernization Financing Act of 2006", was introduced in Council and assigned Bill No. 16-250 which was referred to

the Committees on Education, Libraries, and Recreation and Revenue and Finance. The Bill was adopted on first and second readings on February 7, 2006, and March 7, 2006, respectively. Signed by the Mayor on March 30, 2006,

it was assigned Act No. 16-341 and transmitted to both Houses of Congress for its review. D.C. Law 16-123 became effective on June 8, 2006.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

§ 38-2971.02. Cost-of-construction adjustment for the Fund attributable to District of Columbia Public School capital budgets [Repealed].

Repealed.

(June 8, 2006, D.C. Law 16-123, § 102, 53 DCR 2843; June 12, 2007, D.C. Law 17-9, § 1010(b), 54 DCR 4102; Sept. 18, 2007, D.C. Law 17-20, § 4042(a), 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 4042(a) of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Short title. — Short title: Section 4041 of D.C. Law 17-20 provided that subtitle E of title IV of the act may be cited as the “Public Education Reform Conforming Amendments Act of 2007”.

§ 38-2971.03. Use of Fund.

(a)(1) Funds transferred to the Office of Public Education Facilities Modernization from the Fund are in addition to the annual capital budget appropriation for the Office of Public Education Facilities Modernization, as required in § 47-305.02 [repealed], and shall be used in conjunction with the annual capital appropriation to finance, pursuant to § 38-2973.03, the modernization of public school facilities.

(2) For the purposes of this chapter, the term “modernization” means a construction project designed to bring an existing school building and its grounds up to current standards for condition, design, and utilization, as defined by the District of Columbia Public Schools educational requirements and current building codes. Modernization can include partial or complete demolition, new construction, and rehabilitation of existing building fabric, in any combination.

(b) No funds transferred to the Office of Public Education Facilities Modernization pursuant to this subchapter and subchapter II of this chapter shall be spent except to fund the Office of Public Education Facilities Modernization and to modernize District of Columbia Public Schools in accordance with the Facilities Master Plan and the Capital Improvement Plan and Budget.

(c) No funds shall be transferred by the Chief Financial Officer to the Office of Public Education Facilities Modernization unless the facilities management organizational strategy required by § 38-2971.04 has been submitted to and approved by the Council.

(c-1)(1) Except as provided in paragraph (3) of this subsection, funds provided pursuant to this chapter shall not be spent for any other purposes

than those specified in the work program submitted to the Council on December 3, 2007 ("December submission"), and shall not exceed the amounts specified in the December submission without approval of the Council of an amended work program.

(2) An amended work program for any revisions in purpose or amount of any project or activity shall be submitted, along with a proposed resolution, to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the amended work program within the 45-day period, by resolution, the amended work program shall be deemed disapproved.

(3) Notwithstanding the requirements of paragraph (1) of this subsection, funds may be expended on:

(A) School Consolidation, including PreK-8 Renovation, Receiving School Blitz, Relocation, and Furniture Fixtures and Equipment, not to exceed \$92 million, except as additional funds may be necessary to provide for an increase in Pre-Kindergarten enrollment;

(B) School Stabilization; including General Improvements, A/C and Electrical Upgrades, Boiler Readiness, Roof Repairs, Life/Safety Code, Program Management, and ADA Compliance, not to exceed \$120 million;

(C) School Modernizations, as set forth on pages 100-119 of the December submission, not to exceed \$434.5 million in addition to intra-District transfers;

(D) Technology development, pursuant to an intra-District agreement between OFM and the Office of the Chief Technology Officer, not to exceed \$15 million;

(E) Athletic Facilities, not to exceed \$36 million; and

(F) Such amounts as may be necessary to pay the U.S. Corps of Engineers for prior work.

(1) The Chief Financial Officer shall provide authority to obligate funds to the OFM to modernize and make capital improvements to District of Columbia Public Schools under this chapter if:

(A) The Facilities Master Plan is submitted as required by subsection (b) of this section and certified as required by paragraph (2) of this subsection; or

(B) The work program is submitted as required by subsection (c) or subsection (c-1) of this section, if applicable, of this section and certified as required by paragraph (2) of this subsection.

(2) The Chief Financial Officer shall transfer funds pursuant to this section only upon receipt of written certification from the Secretary to the Council of the District of Columbia that the requirements of § 38-2973.03 have been met.

(June 8, 2006, D.C. Law 16-123, § 103, 53 DCR 2843; June 12, 2007, D.C. Law 17-9, § 1010(c), 54 DCR 4102; Aug. 16, 2008, D.C. Law 17-219, § 4021, 55 DCR 7598.)

Effect of amendments. — D.C. Law 17-9 rewrote subsecs. (a)(1), (b), (c), and (d).

D.C. Law 17-219, in subsec. (a)(1), deleted "and to pay for the budget and administrative

costs of the Office of Public Education Facilities Modernization" following "facilities"; added subsec. (c-1); and rewrote subsec. (d), which had read as follows: "(d) The Chief Financial Officer shall transfer funds pursuant to this section only upon receipt of written certification from the Secretary to the Council of the District of Columbia that the requirements of § 38-2973.03 have been met."

D.C. Law 17-219, § 4021(b), purported to amend subsection (b) and § 4021(d)(2) purported to amend subsection (d).

Temporary Amendment of Section. — Section 2 of D.C. Law 17-15 repealed subsecs. (b), (c), and (d).

Section 5(b) of D.C. Law 17-15 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 17-97 amended subsecs. (b), (c), and (d) to read as follows:

"(b) Funding authority provided to the Office of Public Education Facilities Modernization ("OFM") pursuant to this title shall be spent to fund the OFM and to modernize District of Columbia Public Schools in accordance with the Capital Improvement Plan and Budget and the Facilities Master Plan. The Facilities Master Plan shall be submitted to the Council for its approval no later than May 31, 2008.

"(c) Notwithstanding any other law, a work program detailing the activities and capital projects to be undertaken by OFM for fiscal year 2008 and a proposed organizational structure for OFM, which includes the information listed in section 104(a)(1) through (7), shall be submitted within 60 days of the effective date of the School Modernization Use of Funds Requirements Emergency Amendment Act of 2007, effective October 5, 2007 (D.C. Act 17-129; 54 DCR 10030), and approved by the Council.

"(d)(1) The Chief Financial Officer shall not continue to provide authority to obligate funds to the OFM to modernize District of Columbia Public Schools under this title if either of the following submission deadlines is missed:

"(A) The Facilities Master Plan is not submitted as required by subsection (b) of this section

and certified as required by paragraph (2) of this subsection; or

"(B) The work program and proposed organizational structure are not submitted as required by subsection (c) of this section and certified as required by paragraph (2) of this subsection.

"(2) The Chief Financial Officer shall continue to provide authority to obligate funds only upon receipt of written certification from the Secretary to the Council of the District of Columbia that the submission requirements of subsection (b) or (c) of this section, whichever is applicable, have been met."

Section 7(b) of D.C. Law 17-97 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of School Modernization Funds Submission Requirements Waiver Emergency Amendment Act of 2007 (D.C. Act 17-30, April 19, 2007, 54 DCR 4079).

For temporary (90 day) amendment of section, see § 2 of School Modernization Use of Funds Requirements Emergency Amendment Act of 2007 (D.C. Act 17-129, October 5, 2007, 54 DCR 10030).

For temporary (90 day) amendment of section, see § 2 of School Modernization Use of Funds Requirement Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

For temporary (90 day) amendment, see § 4021 of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28,

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 38-251.

Short title. — Short title: Section 4020 of D.C. Law 17-219 provided that subtitle J of title IV of the act may be cited as the "School Modernization Financing Amendment Act of 2008".

§ 38-2971.04. Facilities management organizational strategy.

(a) No later than May 1, 2006, the Superintendent and Board of Education shall submit to the Council for approval by resolution a comprehensive facilities management organizational strategy that shall include:

(1) The specific staffing and organizational structure charged with overseeing and implementing the school capital improvement program, which may include creating in-house capacity or using private project management or a combination thereof, and the rationale for the structure chosen;

(2) A detailed timeline with specific milestones needed for the development and implementation of the staffing and organizational structure;

(3) Implementation procedures detailing an annual schedule, project eligibility criteria, and definitions of all eligible project types;

(4) Measures of program accountability and project management that will be implemented by the Director of the Office of Public Education Facilities Modernization to ensure that the capital expenditures remain aligned with the approved Facilities Master Plan and the capital budget of the Office of Public Education Facilities Modernization;

(5) A summary report of the school facility condition assessment that was used to inform the development of the revised Facilities Master Plan;

(6) A detailed plan establishing how and when the school system will address issues of excess capacity and facilities space, including consolidation, closure, and co-locations; and

(7) Recommendations for policy and legislative changes necessary for the efficient expenditure of the capital budget.

(b) If the Council does not approve or disapprove of the facilities management organizational strategy submitted pursuant to subsection (a) of this section by resolution within 30 days of its submission, the organizational strategy shall be deemed approved.

(c) If the Council disapproves the facilities management organizational strategy submitted pursuant to subsection (a) of this section, the Superintendent and Board of Education may resubmit, within 30 days of the disapproval, a revised version to the Council. If the Council does not approve or disapprove of the facilities management organizational strategy submitted pursuant to this subsection by resolution within 30 days of its submission, the organizational strategy shall be deemed approved.

(June 8, 2006, D.C. Law 16-123, § 104, 53 DCR 2843; June 12, 2007, D.C. Law 17-9, § 1010(d), 54 DCR 4102.)

Effect of amendments. — D.C. Law 17-9, in subsec. (a)(4), substituted “Director of the Office of Public Education Facilities Modernization” for “Superintendent”, and substituted “Office of Public Education Facilities Modernization” for “District of Columbia Public Schools”.

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Subchapter II. Fiscal Effect.

§ 38-2972.01. Funding the fiscal effect of subchapter I of this chapter.

(a) The revenue to offset reductions to the General Fund of District of Columbia resulting from the deposit of revenue into the Fund shall be funded from the following sources, in the following order of priority, and shall not be allocated for any other uses or purposes until subchapter I of this chapter is fully funded:

(1) The unallocated local revenues, from existing revenue sources, in the

revised quarterly revenue estimates of the Chief Financial Officer, beginning September 2005, through May 2006, which are estimated by the Chief Financial Officer to be collected in fiscal years 2007, 2008, and 2009; provided, that such allocation shall be subject to the funding the fiscal effect of the following acts:

(A) The New Columbia Community Land Trust 22nd and Channing Streets, N.E. Tax Exemption Emergency Act of 2005, effective December 22, 2005 (D.C. Act 16-243; 53 DCR 266);

(B) The Self-Assessing Taxpayer Fairness in Notice Emergency Act of 2005, effective December 22, 2005 (D.C. Act 16-241; 53 DCR 262);

(C) The Parkside Terrace Economic Development Act of 2006, (§ 4607) [D.C. Law 16-84, effective April 4, 2006];

(D) The National Community Reinvestment Coalition Real Property Tax Exemption Act of 2005, (47-1071) (D.C. Act 16-222) [D.C. Law 16-60, effective March 8, 2006];

(E) The February Revised Revenue Allocation Emergency Act of 2006, effective February 27, 2006 (D.C. Act 16-297);

(F) The Triangle Community Garden Equitable Real Property Tax Exemption and Relief Emergency Act of 2006, effective March 23, 2006 (D.C. Act 16-330; 53 DCR 2589); and

(G) The Far Southeast Community Organization Tax Exemption and Forgiveness for Accrued Taxes Emergency Act of 2006 [D.C. Act 16-372, effective May 19, 2006].(D.C. Act 16-372; 53 DCR 4384).

(2) In fiscal year 2007, the unrestricted balance of the General Fund of the District of Columbia, subject to any funds required pursuant to § 42-2802(c)(16), as certified pursuant to the annual audit, as of the end of fiscal year 2007.

(3) Repealed.

(b) The Mayor shall submit an annual budget which incorporates the allocations of revenues as provided in subsection (a) of this section. The Mayor shall incorporate such allocations in any supplemental budget submission.

(June 8, 2006, D.C. Law 16-123, § 141, 53 DCR 2843; Mar. 2, 2007, D.C. Law 16-192, § 1132(a), 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-353, § 108(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 16-192, in subsec. (a)(1), substituted “beginning September 2005, through May 2006,” for “beginning September 2005,”; in subsec. (a)(2), substituted “In” for “Beginning for” and substituted “as of the end of fiscal year 2007” for “to be applied to the fiscal year 2 years following the audited fiscal year”; and repealed subsec. (a)(3), which had read as follows: “(3) The increase in deed recordation and transfer taxes as provided under §§ 42-1103(a-3) and 47-903(a-2).”

D.C. Law 17-353 validated previously made technical corrections in the section heading and subsec. (a).

Emergency legislation. — For temporary

(90 day) amendment of section, see § 1132(a) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 1132(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 1132(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-123. — For

Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 38-2731.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

Short title. — Short title: Section 1131 of D.C. Law 16-192 provided that subtitle L of title I of the act may be cited as the “School

Modernization Financing Amendment Act of 2006”.

Editor’s notes. — Section 401 of D.C. Law 16-123 provided: “Sec. 401. Sunset. If, pursuant to section 141(a)(1), there are unallocated local revenues, from existing revenue sources, sufficient to fund Title I, then section 141(a)(2) and (3), and section 161 shall sunset.”.

Subchapter III. Public School Capital Improvement Expenditure Accountability.

§ 38-2973.01. Establishment of Public School Modernization Advisory Committee.

(a) There is established a Public School Modernization Advisory Committee (“Committee”), whose purpose shall be:

(1) To monitor that capital funds are aligned with the priorities of the Mayor for educational infrastructure;

(2) To monitor that expenditures are aligned with the approved Facilities Master Plan, the District of Columbia Capital Improvement Plan and Budget, and the DCPS maintenance plan; and

(3) To advise the Director of the Office of Public Education Facilities Modernization as to whether the expenditure of funds is managed in accord with best practices and budgetary limitations.

(b) The Committee shall consist of 11 members, as follows:

(1) The Mayor shall appoint 5 members to the Committee, of which one member shall be the parent of a District of Columbia Public Schools (“DCPS”) student and one member shall be a teacher in DCPS.

(2) The Council shall appoint 3 members.

(3) The Chief Financial Officer shall appoint 2 members.

(4) The Board of the Education shall appoint one member.

(1) Be residents of the District of Columbia;

(2) Have expertise in planning, design, construction, asset management, development, financial management, or public financé; and

(3) Be able to describe their stake in public education and public infrastructure.

(d) Members shall serve for a term of 3 years. Of the initial appointments, the Mayor, Council, Chief Financial Officer, and the Board of Education shall each appoint one member to serve for a 2-year term.

(e) Members are required to attend meetings and may be replaced on the Committee for failure to attend meetings.

(f) No member shall serve as an officer, director, partner, employee, consultant, or contractor with an organization that provides services under contract to the Office of Public Education Facilities Modernization. Members shall file financial disclosure forms pursuant to § 1-1162.24.

(g) The Chairperson of the Committee shall be designated by the Mayor in consultation with the Council and Chief Financial Officer.

(h) Members shall serve without compensation, but shall receive reimbursement for transportation, parking, or mileage expenses incurred in the performance of official duties, not to exceed \$25 per meeting.

(June 8, 2006, D.C. Law 16-123, § 201, 53 DCR 2843; June 12, 2007, D.C. Law 17-9, 1010(e), 54 DCR 4102; Apr. 27, 2012, D.C. Law 19-124, § 501(o), 59 DCR 1862.)

Effect of amendments. — D.C. Law 17-9 rewrote subsecs. (a), (b), (d), (f), and (g).

D.C. Law 19-124, in subsec. (f), substituted “§ 1-1162.24” for “§ 1-1106.02”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 401(o) of Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Emergency Amendment Act of 2012 (D.C. Act 19-298, January 29, 2012, 59 DCR 683).

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 19-124. — Law 19-124, the “Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-511, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 6, 2011, and December 20, 2011, respectively. Signed by the Mayor on February 27, 2012, it was assigned Act No. 19-318 and transmitted to both Houses of Congress for its review. D.C. Law 19-124 became effective on April 27, 2012.

§ 38-2973.02. Public School Modernization Advisory Committee functions and coordination with the Director of the Office of Public Education Facilities Modernization.

(a) The Director of the Office of Public Education Facilities Modernization shall consult and receive comments from the Committee on the proposed Facilities Master Plan and the Capital Improvement Plan and Budget prior to their adoption.

(b) Within 30 days of receipt of the proposed Facilities Master Plan or the Capital Improvement Plan and Budget, the Committee shall provide the Director of the Office of Public Education Facilities Modernization with written assessments of the following:

(1) The adequacy of planning and facility information and analysis on which the Facilities Master Plan, the Capital Improvement Plan and Budget, and maintenance plans were based;

(2) Consistency of school facility capacity and grade organization with school system plans, including the Master Education Plan;

(3) Alignment with approved operating and capital budgets;

(4) Quality and quantity of community and local school participation in the planning process;

(5) Overall benefit and level of support provided or created for the project school’s educational program;

(6) Community planning issues, including:

(A) Desired or needed school-community uses;

(B) Potential for partnership and collaboration with other city agencies and projects;

(C) Economic development and city planning issues for the affected area surrounding the proposed school capital project;

(D) Parking and transportation;

(E) Participation of local, small, and disadvantaged business enterprises in the procurement process related to the proposed project; and

(F) Other issues directly related to the modernization, construction, or renovation of the project school that are likely to have an impact on the community; and

(7) Projected measurable benchmarks to be achieved by the end of the fiscal year for each capital project.

(c) The Committee shall forward any written assessment provided to the Director of the Office of Public Education Facilities Modernization to the Mayor, the Council, the Chancellor of the District of Columbia Public Schools, and the Chief Financial Officer.

(d) The Director of the Office of Public Education Facilities Modernization shall submit to the Committee on a quarterly basis a status report on all capital improvement projects funded through the capital budget of the Office of Public Education Facilities Modernization. The report shall include the following information:

(1) A summary of ongoing capital improvement projects;

(2) The approved budget and current and estimated cost of completion of each capital improvement project;

(3) Encumbered and actual expenditures of each project;

(4) A detailed list of change orders approved for each capital improvement project;

(5) A detailed schedule with milestones identified and a comparison of original schedule with current status of work; and

(6) If any project has a different scope, exceeds its budget, or is proceeding on a substantially modified schedule, an explanation regarding the revised scope of work, a new expected date of completion, a revised anticipated budget for each capital improvement project, and a justification for the change, delay, or increase in cost.

(e)(1) Within 30 days of receipt of the quarterly status report from the Director of the Office of Public Education Facilities Modernization, the Committee shall submit a copy of the report, any written analysis or concerns about specific items or projects within the report, and specific policy recommendations, to the Mayor, the Council, the Chancellor of the District of Columbia Public Schools, and the Chief Financial Officer.

(2) The Director of the Office of Public Education Facilities Modernization shall respond to written analysis or concerns in writing within 30 days of receipt of comments or queries from the Committee.

(f) The Chief Financial Officer shall provide appropriate staff support to the Committee.

(June 8, 2006, D.C. Law 16-123, § 202, 53 DCR 2843; June 12, 2007, D.C. Law 17-9, § 1010(f), 54 DCR 4102.)

Effect of amendments. — D.C. Law 17-9 rewrote the section.

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

§ 38-2973.03. Annual adoption of Capital Improvement Plan and Budget. [Repealed].

Repealed.

(June 8, 2006, D.C. Law 16-123, § 203, 53 DCR 2843; June 12, 2007, D.C. Law 17-9, § 1010(g), 54 DCR 4102; Mar. 3, 2010, D.C. Law 18-111, § 4072, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) repeal, see § 4012 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

For temporary (90 day) repeal, see § 4072 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) repeal, see § 4072 of

Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 17-9. — For Law 17-9, see notes following § 38-103.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 38-191.

§ 38-2973.04. Compliance with District, local, small and disadvantaged businesses contracting requirements.

(a) The Office of Public Education Facilities Modernization shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the Office of Public Education Facilities Modernization or any agency or instrumentality of the Office of Public Education Facilities Modernization with respect to any project designated in the Facilities Master Plan shall comply with the requirements of subchapter IX-A of Chapter 2 of Title 2.

(b) The Office of Public Education Facilities Modernization shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the Office of Public Education Facilities Modernization or any agency or instrumentality of the Office of Public Education Facilities Modernization with respect to each major phase of development and construction of any project designated in the Facilities Master Plan, including contracts for architectural, engineering, and construction services, shall provide that at least 35% of the work in the aggregate under such contracts shall be awarded to local business enterprises, small business enterprises, or disadvantaged business enterprises, as such terms are defined in § 2-218.02; provided, that if the 35% requirement is unattainable, the Office of Public Education Facilities Modernization shall report this to the Council for reconsideration.

(c) The Office of Public Education Facilities Modernization shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the Office of Public Education Facilities Modernization or any agency or instrumentality of the Office of Public Education Facilities Modernization with respect to the development and construction of an any project designated

in the Facilities Master Plan shall comply with First Source Employment requirements of subchapter X of Chapter 2 of Title 2.

(d)(1) The Office of Public Education Facilities Modernization shall take all measures as shall be reasonably necessary to assure that all contracts entered into by the Office of Public Education Facilities Modernization or any agency or instrumentality of the Office of Public Education Facilities Modernization with respect to the development and construction of any project designated in the Facilities Master Plan shall comply with the requirements of subchapter I of Chapter 14 of Title 32.

(2)(A) 50% of all apprenticeship hours performed pursuant to apprenticeship programs related to the construction and operation of any project designated in the Facilities Master Plan shall be performed by District of Columbia residents.

(B) Any prime contractor or subcontractor that fails to make a good-faith effort to comply with the requirements of this paragraph shall be subject to a monetary fine in the amount of 5% of the direct or indirect labor costs of the contract. Fines shall be imposed by the Contracting Officer and remitted to the Department of Employment Services to be applied to job training programs, subject to appropriations by Congress.

(June 8, 2006, D.C. Law 16-123, § 204, 53 DCR 2843; June 12, 2007, D.C. Law 17-9, § 1010(h), 54 DCR 4102; Mar. 25, 2009, D.C. Law 17-353, § 108(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-9 substituted “Office of Public Education Facilities Modernization” for “District of Columbia Public Schools”.

D.C. Law 17-353 validated previously made technical corrections in subsec. (b).

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

Legislative history of Law 17-9. — For Law 17-9, see notes under § 38-103.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 38-102.

§ 38-2973.05. Audit of capital improvement projects.

No later than June 1, 2007, and each year thereafter until the completion of all projects designated in the Facilities Master Plan, the District of Columbia Auditor shall prepare an annual report to the public on the use of the capital funds by the District of Columbia Public Schools during the preceding fiscal year. The report shall include a school- and project-specific audit of all expenditures for school facility capital improvements, maintenance, repairs, and operating costs and an assessment of whether the District has met the process, quality, schedule, and cost objectives of the Facilities Master Plan and Capital Improvement Plan and Budget.

(June 8, 2006, D.C. Law 16-123, § 205, 53 DCR 2843.)

Legislative history of Law 16-123. — For Law 16-123, see notes following § 38-2971.01.

SUBTITLE XI. MISCELLANEOUS EDUCATION PROVISIONS.

CHAPTER 30. COMPACT FOR EDUCATION OF THE EDUCATION COMMISSION OF THE STATES.

Sec.

38-3001. Adopted; District membership in Commission approved.

38-3002. Compact provisions.

Sec.

38-3003. Commission members from District.

38-3004. Commission bylaws to be filed with Mayor.

§ 38-3001. Adopted; District membership in Commission approved.

The District of Columbia adopts the Compact for Education of the Education Commission of the States ("Compact") and becomes a member of the Education Commission of the States ("Commission").

(Mar. 14, 1984, D.C. Law 5-65, § 2, 31 DCR 198.)

Prior Codifications. — 1981 Ed., § 31-2301.

Legislative history of Law 5-65. — Law 5-65, "Education Commission of the States Participation Act of 1983," was introduced in Council and assigned Bill No. 5-270, which was referred to the Committee on Education. The Bill was adopted on first and second readings on December 20, 1983, and January 3, 1984, respectively. Signed by the Mayor on January 11, 1984, it was assigned Act No. 5-98 and transmitted to both Houses of Congress for its review.

Short title. — Short title: The first section of D.C. Law 5-65 provided: "That this act may be cited as 'Education Commission of the States Participation Act of 1983'."

Editor's notes. — Complementary Legislation: Ala.—Code 1975, §§ 16-44-1 to 16-44-3. Alaska.—AS 14.44.050 to 14.44.060. Ariz.—A.R.S. § 15-1901. Ark.—A.C.A. §§ 6-4-201 to 6-4-203. Cal.—West's Ann.Cal.Educ.Code, §§ 12510 to 12515.5. Colo.—West's C.R.S.A. §§ 24-60-1201 to 24-60-1204. Conn.—C.G.S.A. §§ 10-374 to 10-376. Del.—14 Del.C. §§ 8201, 8211. D.C.—D.C. Official Code, 2001 Ed. §§ 38-3001 to 38-3004. Fla.—West's F.S.A. §§ 1000.31 to 1000.39. Ga.—O.C.G.A. §§ 20-

6-20 to 20-6-24. Hawaii—H R S §§ 311-1 to 311-6. Idaho—I.C. §§ 33-4101 to 33-4103. Ill.—S.H.A. 45 ILCS 90/0.01 to 9/4. Iowa—I.C.A. §§ 272B.1 to 272B.3. Kan.—K.S.A. 72-6011 to 72-6014. Ky.—KRS 156.710, 156.720. La.—LSA-R.S. 17:1911 to 17:1913. Maine—20-A M.R.S.A. §§ 601 to 609. Md.—Code, Education, §§ 25-101 to 25-104. Mass.—M.G.L.A. c. 69 App., §§ 1-1 to 1-3. Mich.—M.C.L.A. §§ 388.1301 to 388.1304. Minn.—M.S.A. §§ 127A.80, 127A.81. Miss.—Code 1972, §§ 37-135-11 to 37-135-15. Mo.—V.A.M.S. §§ 173.300 to 173.330, 173.715 to 173.721. Nev.—N.R.S. 399.015. N.H.—RSA 200-G:1 to 200-G:3. N.J.—N.J.S.A. 18A:75-1 to 18A:75-12. N.M.—NMSA 1978, §§ 11-8-1 to 11-8-11. N.Y.—McKinney's Education Law, § 107. Ohio—R.C. §§ 3301.48, 3301.49. Okl.—70 Okl.St.Ann. §§ 506.1 to 506.3. Pa.—24 P.S. §§ 5401 to 5403. Puerto Rico—18 L.P.R.A. §§ 1221 to 1226. R.I.—Gen.Laws. 1956, § 16-47-1. S.C.—Code 1976, §§ 59-11-10 to 59-11-30. Tenn.—T.C.A. §§ 49-12-201 to 49-12-203. Tex.—V.T.C.A., Education Code §§ 161.01 to 161.04. Virgin Islands—17 V.I.C. §§ 551 to 559. Va.—Code 1950, §§ 22.1-336 to 22.1-338. W.Va.—Code, 18-10D-1 to 18-10D-7. Wis.—W.S.A. 39.75, 39.76. Wyo.—Wyo.Stat.Ann. §§ 21-16-301, 21-16-302.

§ 38-3002. Compact provisions.

Except as provided in § 38-3003, the Compact is entered into and enacted into law as follows:

Article I. Purpose and Policy.

(a) It is the purpose of this compact to:

(1) Establish and maintain close cooperation and understanding among executive, legislative, professional education and lay leadership on a nationwide basis at the State and local levels.

(2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

(3) Provide a clearing house of information on matters relating to educational problems and how they are being met in different places throughout the Nation, so that the executive and legislative branches of State Government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

(4) Facilitate the improvement of State and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advance in educational opportunities, methods and facilities.

(b) It is the policy of this compact to encourage and promote local and State initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and States.

(c) The party States recognize that each of them has an interest in the quality and quantity of education furnished in each of the other States, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the Nation, and because the products and services contributing to the health, welfare and economic advancement of each State are supplied in significant part by persons educated in other States.

Article II. State Defined.

As used in this Compact, "State" means a State, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

(a) The Education Commission of the States, hereinafter called "the Commission", is hereby established: The Commission shall consist of seven members representing each party State. One of such members shall be the Governor; two shall be members of the State legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. If the laws of the State prevent legislators from serving on the Commission, six members shall be appointed and serve at the pleasure of the Governor, unless the laws of the State otherwise provide. In addition to any other principles or requirements which a

State may establish for the appointment and service of its members of the Commission, the guiding principle for the composition of the membership on the Commission from each party State shall be that the members representing such State shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the State Government, higher education, the State education system, local education, lay and professional, public and non-public educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the Governor, having responsibility for one or more programs of public education. In addition to the members of the Commission representing the party States, there may be not to exceed ten nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(b) The members of the Commission shall be entitled to one vote each on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the Commission are cast in favor thereof. Action of the Commission shall be only at a meeting at which a majority of the Commissioners are present. The Commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Commission may delegate the exercise of any of its powers to the steering committee or the Executive Director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III(j).

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, who shall be called Governor, a vice chairman and a treasurer. The Commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the Commission, and together with the treasurer and such other personnel as the Commission may deem appropriate shall be bonded in such amount as the Commission shall determine. The executive director shall be secretary.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party States, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Commission, and shall fix the duties and compensation of such personnel. The Commission in its bylaws shall provide for the personnel policies and programs of the Commission.

(f) The Commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(g) The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any State, the United

States, or any governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(h) The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(i) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party States.

(j) The Commission annually shall make to the Governor and legislature of each party State a report covering the activities of the Commission for the preceding year. The Commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the Commission by other provisions of the compact, the Commission shall have authority to:

(1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

(2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

(3) Develop proposals for adequate financing of education as a whole and at each of its many levels.

(4) Conduct or participate in research of the types referred to in this Article in any instance where the Commission finds that such research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

(5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

(6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this compact.

Article V. Cooperation With Federal Government.

(a) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the Federal Government, the United

States may be represented on the Commission by not to exceed ten representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to Federal law, and may be drawn from any one or more branches of the Federal Government, but no such representative shall have a vote on the Commission.

(b) The Commission may provide information and make recommendations to any executive or legislative agency or officer of the Federal Government concerning the common educational policies of the States, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

(a) To assist in the expeditious conduct of its business when the full Commission is not meeting, the Commission shall elect a steering committee of thirty-two members which, subject to the provisions of this compact and consistent with the policies of the Commission, shall be constituted and function as provided in the bylaws of the Commission. One-fourth of the voting membership of the steering committee shall consist of Governors, one-fourth shall consist of Legislators, and the remainder shall consist of other members of the Commission. A Federal representative on the Commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the Commission shall be elected as follows: sixteen for one year and sixteen for two years. The chairman, vice chairman, and treasurer of the Commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during the continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the Commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two term limitation.

(b) The Commission may establish advisory and technical committees composed of State, local, and Federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the States concerned, be established to consider any matter of special concern to two or more of the party States.

(c) The Commission may establish such additional committees as its bylaws may provide.

Article VII. Finance.

(a) The Commission shall advise the Governor or designated officer or officers of each party State of its budget and estimated expenditures for such period as may be required by the laws of that party State. Each of the Commissioner's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party States.

(b) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the Commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party States.

(c) The Commission shall not pledge the credit of any party States. The Commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III(g) of this compact, provided that the Commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it pursuant to Article III(g) thereof, the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

Article VIII. Eligible Parties; Entry Into and Withdrawal.

(a) This compact shall have as eligible parties all States, Territories, and Possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a Governor, the term "Governor," as used in this compact, shall mean the closest equivalent official of such jurisdiction.

(b) Any State or other eligible jurisdiction may enter into this compact and it shall become binding thereon when it has adopted the same; provided that in order to enter into initial effect, adoption by at least ten eligible party jurisdictions shall be required.

(c) Adoption of the compact may be either by enactment thereof or by adherence thereto by the Governor; provided that in the absence of enactment, adherence by the Governor shall be sufficient to make his State a party only until December 31, 1967. During any period when a State is participating in this compact through gubernatorial action, the Governor shall appoint those persons who in addition to himself, shall serve as the members of the Commission from his State, and shall provide to the Commission an equitable share of the financial support of the Commission from any source available to him.

(d) Except for a withdrawal effective December 31, 1967, in accordance with paragraph (c) of this Article, any party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

Article IX. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any Government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the State affected as to all severable matters.

(Mar. 14, 1984, D.C. Law 5-65, § 3, 31 DCR 198.)

Prior Codifications. — 1981 Ed., § 31-2302. legislative history of D.C. Law 5-65, see Historical and Statutory Notes following § 38-2301.

Legislative history of Law 5-65. — For

§ 38-3003. Commission members from District.

The 7 Commission members from the District of Columbia shall be:

- (1) The Mayor of the District of Columbia;
- (2) The Chairman of the Council of the District of Columbia;
- (3) The Chairperson of the Committee on Education of the Council of the District of Columbia;
- (4) The President of the Board of Education of the District of Columbia;
- (5) The Superintendent of Schools of the District of Columbia;
- (6) The Chairperson of the Board of Trustees of the University of the District of Columbia; and
- (7) The President of the University of the District of Columbia.

(Mar. 14, 1984, D.C. Law 5-65, § 4, 31 DCR 198.)

Section references. — This section is referred to in § 38-2302.

Prior Codifications. — 1981 Ed., § 31-2303.

Legislative history of Law 5-65. — For legislative history of D.C. Law 5-65, see Historical and Statutory Notes following § 38-2301.

References in text. — The “Committee on Education of the Council of the District of Columbia,” referred to in paragraph (3), has been changed to the “Committee on Education and Libraries” by Resolution 7-1 which adopted the Rules Resolution for Council Period VII, effective January 2, 1987.

§ 38-3004. Commission bylaws to be filed with Mayor.

Pursuant to Article III(i) of the Compact, the Commission shall file a copy of the Commission's bylaws and amendments to the bylaws with the Mayor of the District of Columbia.

(Mar. 14, 1984, D.C. Law 5-65, § 5, 31 DCR 198.)

Prior Codifications. — 1981 Ed., § 31-2304. legislative history of D.C. Law 5-65, see Historical and Statutory Notes following § 38-2301.

Legislative history of Law 5-65. — For

CHAPTER 31. TRAFFIC CONTROL IN SCHOOL ZONES.

Sec.

38-3101. Installation of traffic control devices.

§ 38-3101. Installation of traffic control devices.

(a) The Mayor shall install traffic control devices, as deemed necessary, after completing an investigation of school zones.

(b) The Mayor shall, when conducting an investigation, consider the number of persons who have been struck by a vehicle, bicycle, or motorcycle in a school zone, the likelihood of these accidents occurring in the future and the volume of traffic.

(c) The District of Columbia Public Schools and the Metropolitan Police Department shall submit monthly statistical reports to the Mayor which shall include:

(1) The number of persons who were hit by a vehicle, bicycle or motorcycle in and around school zones; and

(2) The type of injuries suffered.

(d) The information in subsection (c) of this section shall be made available, within 15 days from the date of request from the Mayor.

(e)(1) School zones shall have a speed limit posted at 15 miles per hour and signs erected warning of the presence of children. For those school zones that have a traffic control device, signs shall be erected warning of the presence of these devices.

(2) The Mayor shall place the traffic control device, deemed necessary under subsection (a) of this section, on every street within 100 yards of any school building within a school zone.

(f) Crossing guards shall be placed at elementary schools, middle or junior high schools, and high schools where considered necessary by the District Department of Transportation, working collaboratively with the District of Columbia Public Schools and with the affected local public school or public charter school.

(f-1) Beginning in 2009, the District Department of Transportation shall provide, by July 31st of each year, recommendations to the Mayor, the Council, the Chancellor of the District of Columbia Public Schools, and the Chief of the Metropolitan Police Department on the deployment of school crossing guards, taking into account the impact of school closings and reconfigurations, projected enrollment, traffic conditions, and all other relevant factors.

(g) Traffic control devices, where installed and posted throughout the city and made available as the budget allows, pursuant to this section or otherwise, shall not be deemed obstructions of the road or street. No cause of action at law or in equity, nor any administrative action shall be maintained against the District government for damages by traffic control devices.

(h) The fine for speeding pursuant to 18 DCMR § 2600.1 shall be doubled when the infraction occurs in a school zone.

(i) The Mayor shall submit a report to the Council which shall include the findings of the investigation and the type of traffic control devices that should be installed at all school zones within 60 days from May 23, 2000.

(j) For purposes of this chapter, “traffic control devices” includes traffic signals, flashing red and yellow signals, stop signs, signs that warn of the presence of children, markers, speed humps or bumps, rumble strips, or signs that reduce the speed limit.

(May 23, 2000, D.C. Law 13-111, § 2, 47 DCR 2206; Sept. 18, 2007, D.C. Law 17-20, § 6023, 54 DCR 7052; Mar. 21, 2009, D.C. Law 17-320, § 3, 56 DCR 219.)

Effect of amendments. — D.C. Law 17-20 rewrote subsec. (f), which had read as follows: “(f) At least one crossing guard shall be placed at elementary schools. Crossing guards shall be placed at middle or junior high schools, and high schools where deemed necessary by the Metropolitan Police Department.”

D.C. Law 17-320 added subsec. (f-1).

Temporary Amendment of Section. — Section 2 of D.C. Law 17-94, in subsec. (a), substituted “school zones and streets directly bordering recreation centers, libraries, and public parks” for “school zones”; in subsec. (b), substituted “school zone or on streets directly bordering recreation centers, libraries, and public parks” for “school zone”; in subsec. (c)(1), substituted “schools zones and on streets directly bordering recreation centers, libraries, and public parks” for “school zones”; in subsec. (e), in par. (1), substituted “School zones and streets directly bordering recreation centers, libraries, and public parks” for “School zones” and “school zones and streets directly bordering recreation centers, libraries, and public parks” for “School zones”, and amended par. (2) to read as follows:

“(2) The Mayor shall place the traffic control device, deemed necessary under subsection (a) of this section, on every street within 100 yards of a:

- “(A) School building within a school zone;
- “(B) Recreation center;
- “(C) Library; or

“(D) Public park.”; in subsec. (h), substituted “school zone or on streets directly bordering recreation centers, libraries, and public parks” for “school zone”; and in subsec. (i), substituted “school zones, recreation centers, libraries, and public parks within 60 days from October 15,

2007” for “school zones within 60 days from the effective date of this act”.

Section 4(b) of D.C. Law 17-94 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 6023 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2 of School Proximity Traffic Calming Emergency Amendment Act of 2007 (D.C. Act 17-169, October 25, 2007, 54 DCR 10980).

Legislative history of Law 13-111. — Law 13-111, the “School Proximity Traffic Calming Act of 2000,” was introduced in Council and assigned Bill No. 13-131, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on January 4, 2000, and February 1, 2000, respectively. Signed by the Mayor on February 18, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-111 became effective on May 23, 2000.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 38-451.

Legislative history of Law 17-320. — Law 17-320, the “School Safety and Security Contracting Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-742 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respectively. Signed by the Mayor on December 22, 2008, it was assigned Act No. 17-624 and transmitted to both Houses of Congress for its review. D.C. Law 17-320 became effective on March 21, 2009.

CHAPTER 32. NOTICE REQUIREMENT FOR FACILITIES LOCATED NEAR SCHOOLS.

Sec.

38-3201. Mayor to provide notice to Board

when locating certain facilities near schools.

§ 38-3201. Mayor to provide notice to Board when locating certain facilities near schools.

(a) The Mayor shall give at least 60 days written notice to the District of Columbia Board of Education or the governing body of a private or parochial school of the proposed establishment of a homeless shelter, correctional facility, halfway house, or drug treatment center, to be located within 400 feet of a school, or adjacent school grounds in the District of Columbia, used for the instruction of minors.

(b) The Mayor shall give great weight to written comments of the District of Columbia Board of Education in regard to the establishment or current operation of a homeless shelter, correctional facility, halfway house, or drug treatment center located within 400 feet of a District of Columbia public school, of the adjacent school grounds, used for the instruction of minors.

(May 21, 1992, D.C. Law 10-255, § 2, 39 DCR 2149.)

Legislative history of Law 9-103. — Law 9-103, the 'Community-Based Residential Facilities Act of 1992', was introduced in Council and assigned Bill No. 9-228. The Bill was adopted on first and second readings on February

4, 1992, and March 3, 1992, respectively. Signed by the Mayor on March 23, 1992, it was assigned Act No. 9-175 and transmitted to Both Houses of Congress for its review. D.C. Law 9-103 became effective on May 21, 1992.

CHAPTER 33. EDUCATIONAL SERVICES FOR DETAINED AND COMMITTED YOUTH.

Sec.

38-3301. Educational services for detained and committed youth under the super-

vision of the Department of Youth Rehabilitation Services.

§ 38-3301. Educational services for detained and committed youth under the supervision of the Department of Youth Rehabilitation Services.

The District of Columbia Board of Education shall enter into a Memorandum of Understanding ("MOU") with the Mayor that shall specify how educational services shall be provided to committed and detained youth who are under the supervision of the Department of Youth Rehabilitation Services ("DYRS") and are residing in the Oak Hill Youth Center, the Youth Services Center, and any other replacement or new secure facilities operated by or on behalf of DYRS for youth in DYRS custody. The MOU shall specify in detail how an appropriate educational program shall be delivered to children under the supervision of DYRS and how operating funds, allocations, and other funds that support the provision of these services will be utilized.

(Mar. 2, 2007, D.C. Law 16-192, § 4032, 53 DCR 6899.)

Emergency legislation. — For temporary (90 day) addition, see § 4032 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 4032 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 4032 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — Law 16-192, the "Fiscal Year Budget Support Act of

2006", was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Short title. — Short title: Section 4031 of D.C. Law 16-192 provided that subtitle D of title IV of the act may be cited as the "Educational Services for Detained and Committed Youth Act of 2006".

TITLE 39. LIBRARIES AND CULTURAL INSTITUTIONS.

SUBTITLE I. LIBRARIES.

Chapter

1. Public Libraries.

SUBTITLE II. CULTURAL INSTITUTIONS.

2. Commission on the Arts and Humanities.
3. Museum of the City of Washington.
4. Arts, Cultural, and Educational Facilities Support.
5. Film DC Economic Incentive.

SUBTITLE I. LIBRARIES.

CHAPTER 1. PUBLIC LIBRARIES.

Subchapter I. General

Sec.

- 39-101. Public library established; Mayor authorized to accept gifts.
- 39-102. Branch libraries.
- 39-103. Persons entitled to use of library; deposit of fees.
- 39-104. Board of Trustees — Appointment; qualifications; term; vacancies; officers; compensation; ex officio member.
- 39-105. Board of Trustees — Duties; deposit of fines.
- 39-106. Mayor authorized to seek appropriations for library expenses.
- 39-107. Purchase, rent, and sale of library-related items; use of profits.
- 39-107a. Authority to accept donations and gifts.

Sec.

- 39-108. Confidentiality of circulation records.
- 39-109. Establishment of the Library Enhancement Task Force.
- 39-110. Membership and organization of the Library Enhancement Task Force.
- 39-111. Duties of the Task Force.
- 39-112. Establishment of the Library Development Trust Fund.
- 39-113. Competitive process for performance of work.

Subchapter II. Miscellaneous

- 39-121, 39-122. [Repealed].
- 39-123. Transfer of miscellaneous books to District public library.
- 39-124. Depository of Government publications.

Subchapter I. General.

§ 39-101. Public library established; Mayor authorized to accept gifts.

A free public library is hereby established and shall be maintained in the District of Columbia which shall be the property of the said District and a supplement of the public educational system of said District. Said library shall consist of a central library and such number of branch libraries so located and so supported as to furnish books and other printed matter and information service convenient to the homes and offices of all residents of the said District. All actions relating to such library, or for the recovery of any penalties lawfully

established in relation thereto, shall be brought in the name of the District of Columbia; and the Mayor of said District is further authorized to receive, as component parts of said library, collections of books and other publications that may be transferred to him.

(June 3, 1896, 29 Stat. 244, ch. 315, § 1; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 1; Mar. 14, 2007, D.C. Law 16-268, § 5(a), 54 DCR 833; Mar. 25, 2009, D.C. Law 17-353, § 160(b), 56 DCR 1117.)

Section references. — This section is referred to in § 39-102.

Prior Codifications. — 1981 Ed., § 37-101. 1973 Ed., § 37-101.

Effect of amendments. — D.C. Law 16-268, in the third sentence, deleted the phrase “and the Mayor of the said District is authorized on behalf of said District to accept and take title to all gifts, bequests, and devises for the purpose of aiding in the maintenance or endowment of said library” following “District of Columbia”.

D.C. Law 17-353 substituted “District of Columbia which” for “District of Columbia, which”.

Temporary Addition of Section. — Section 2 of D.C. Law 18-3 added a section to read as follows: “Sec. 2. Library closing plan.

“(a) The Board of Library Trustees and the District of Columbia Public Library shall submit a library closing plan (“plan”) to the Council, for a 45-day period of review, prior to the closing of current library services at R.L. Christian Library, located at 1300 H Street, N.E., in Ward 6, and Langston Library, located at 2600 Benning Road, N.E., in Ward 5.

“(b) The 45-day period of review shall exclude Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the plan by resolution, after a public hearing, within the 45-day review period, the proposed plan shall be deemed approved.”

Section 4(b) of D.C. Law 18-3 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) facility planning and construction for public libraries provisions, see §§ 4042, 4044, of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) maximization of federal and private grants provisions, see § 4052 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) facility planning and construction for public libraries provisions, see §§ 4042, 4044, of Fiscal Year 2005 Budget Support Congressional Review Emergency Act

of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) maximization of federal and private grants provisions, see § 4052 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) addition, see § 2 of Library Kiosk Services Emergency Act of 2009 (D.C. Act 18-8, January 29, 2009, 56 DCR

Legislative history of Law 16-268. — Law 16-268, the “Public Charter School Assets and Facilities Preservation Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-624, which was referred to Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 6, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-624 and transmitted to both Houses of Congress for its review. D.C. Law 16-268 became effective on March 14, 2007.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Short title. — Short title of subtitle C of title IV of Law 15-205: Section 4041 of D.C. 15-205 provided that subtitle C of title IV of the act may be cited as the District of Columbia Public Library Facilities Amendment Act of 2004.

Short title of subtitle D of title IV of Law 15-205: Section 4051 of D.C. 15-205 provided that subtitle D of title IV of the act may be cited as the Maximize Collections of Federal and Private Grants Act of 2004.

Editor’s notes. — Sections 4042 and 4044 of D.C. Law 15-205 provided:

“Sec. 4042. Facility Planning and Construction for Public Libraries.

“Facilities planning for the Georgetown, Petworth, Southeast, Mount Pleasant and Francis Gregory Libraries shall occur in fiscal

year 2005 through the cooperation of the District of Columbia Public Libraries, the Office of Property Management and the Department of Recreation. Facilities planning shall incorporate considerations of literacy activities at existing libraries and recreation centers.

"Sec. 4044. Effective date.

"This subtitle subtitle C of title IV of D.C. Law 15-205 shall be effective October 1, 2005."

Maximization of Federal and Private Grant Acquisition. Section 4052 of D.C. Law 15-205 provided: "To support the effective use of local dollars, the District of Columbia Public Schools, District of Columbia Public Charter Schools, the University of the District of Columbia, the Department of Parks and Recreation and the District of Columbia Public Library shall each provide a detailed plan for maximizing the federal and private grants received by the agencies and provide a report to the Council of their efforts to pursue grants and maximize those opportunities by November 1, 2004."

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Funding.

Mayor was authorized to reduce funds allocated to District of Columbia public library in budget enacted by District's Council and in Appropriations Act enacted by Congress, in attempting to balance District's budget, despite library's status as statutory independent agency; mayor had statutory duty to balance budget regardless of sums previously appropriated, classification of library as statutory independent agency did not make library indepen-

dent of mayor's fiscal authority, and neither Council's budget nor Appropriations Act contained any language requiring that reductions be made only in funding of agencies under mayor's control. D.C. Code 1981, §§ 1-299.6, 1-1502(5), 37-101, 37-106, 47-301(a)(1), 47-310(a)(9), 47-313(d); District of Columbia Appropriations Act, 1990, § 103, 103 Stat. 1267. *Hazel v. Barry*, 580 A.2d 110, 1990 D.C. App. LEXIS 226 (1990).

§ 39-102. Branch libraries.

In order to make the said library an effective supplement of the public educational system of the said District and to furnish the system of branch libraries provided for in § 39-101, the Board of Library Trustees, hereinafter provided, is authorized to enter into agreements with the Board of Education of the said District for the establishment and maintenance of branch libraries in suitable rooms in such public-school buildings of the said District as will supplement the central library and branch libraries in separate buildings. The Board of Library Trustees, hereinafter provided, is authorized within the limits of appropriations first made therefor, to rent suitable buildings or parts of buildings for use as branch libraries and distributing stations.

(June 3, 1896, 29 Stat. 244, ch. 315, § 2; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 2.)

Prior Codifications. — 1981 Ed., § 37-102. 1973 Ed., § 37-102.

§ 39-103. Persons entitled to use of library; deposit of fees.

All persons who are permanent or temporary residents of the District of

Columbia shall be entitled to the privileges of the District of Columbia Public Library including the use of books and other materials, as a lending or circulating library, subject to rules and regulations established by the Board of Library Trustees. For purposes of this section, persons living outside of the District of Columbia but having regular business or employment or attending school in the District of Columbia shall also be deemed temporary residents of the District of Columbia. Persons residing in jurisdictions outside of the District of Columbia but within the Washington Metropolitan Area (the Washington Metropolitan Area means the Standard Metropolitan Statistical Area "SMSA") who do not qualify as temporary residents in the manner described above may obtain a free library user's card from the District of Columbia Public Library; provided, that the jurisdiction in which such person resides permits District of Columbia residents to obtain a free library user's card from the public library in that jurisdiction. Any person residing in the Washington Metropolitan Area who does not qualify under any of the conditions stated above for the free library user's card may obtain a library user's card from the District of Columbia Public Library upon payment of a fee to be fixed by the Board of Library Trustees.

(June 3, 1896, 29 Stat. 244, ch. 315, § 3; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 3; Mar. 3, 1979, D.C. Law 2-131, § 2, 25 DCR 3487.)

Prior Codifications. — 1981 Ed., § 37-103.
1973 Ed., § 37-103.

Legislative history of Law 2-131. — Law 2-131 was introduced in Council and assigned Bill No. 2-215, which was referred to the Committee on Education, Recreation and Youth

Affairs. The Bill was adopted on first and second readings on July 25, 1978 and September 19, 1978, respectively. Signed by the Mayor on October 13, 1978, it was assigned Act No. 2-278 and transmitted to both Houses of Congress for its review.

§ 39-104. Board of Trustees — Appointment; qualifications; term; vacancies; officers; compensation; ex officio member.

(a) The public library shall be in the charge of a Board of Library Trustees ("Board"), which shall be composed of 9 members appointed by the Mayor of the District of Columbia, with the advice and consent of the Council of the District of Columbia.

(b) Each member of the Board shall be a resident of the District of Columbia, and shall have a demonstrated interest in the public library.

(c) Each member of the Board shall serve for a term of 5 years, and until a successor is appointed and confirmed.

(d) Of the members of the Board appointed under this subchapter, 3 shall be appointed for a term of 5 years, 3 shall be appointed for a term of 4 years, and 3 shall be appointed for a term of 3 years from the date the first members are installed. Thereafter, that date shall become the anniversary date for all appointments. The members of the Board serving on September 5, 1985, shall continue to serve until the new Board members are qualified to serve.

(e) A member of the Board may be reappointed but shall not serve more than 2 consecutive terms. A person may be reappointed after an absence of 1 year from the board.

(f) Whenever a vacancy as a consequence of resignation, disability, death, or for other reasons occurs in an unexpired term on the Board, the Mayor shall appoint a replacement to fill that unexpired term in the same manner specified in subsections (a) and (b) of this section. A member appointed to fill an unexpired term shall serve only for the remainder of that term. The completion of the unexpired term of a former member's term shall not constitute a full term for purposes of subsection (e) of this section.

(g) Each year, the Board shall elect 1 of its members to serve as its president and may elect any other officer it requires.

(h) Members of the Board shall be compensated at a rate to be determined by the Mayor, in accordance with § 1-611.08.

(i) The librarian of the public library shall be a nonvoting, ex officio member of the Board.

(June 3, 1896, 29 Stat. 244, ch. 315, § 4; Apr. 1, 1926, 44 Stat. 229, ch. 98, § 4; Sept. 5, 1985, D.C. Law 6-17, § 2, 32 DCR 3582.)

Cross references. — Disclosure of financial interests, see § 1-1106.02.

Nomination and approval of agency heads, see § 1-523.01.

Section references. — This section is referred to in § 1-1106.02.

Prior Codifications. — 1981 Ed., § 37-104. 1973 Ed., § 37-104.

Legislative history of Law 6-17. — Law

6-17 was introduced in Council and assigned Bill No. 6-114, which was referred to the Committee on Libraries, Recreation, and Charitable Games. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 10, 1985, it was assigned Act No. 6-32 and transmitted to both Houses of Congress for its review.

§ 39-105. Board of Trustees — Duties; deposit of fines.

(a) The Board of Library Trustees shall:

(1) Have the authority to provide for the care and preservation of the library;

(2) Determine the policy of the public library;

(3) Have the authority to procure all goods and services necessary to operate the library system, independent of the Office of Contracting and the requirements of Unit A of Chapter 3 of Title 2 [§ 2-351.01 et seq.], except as specified in § 2-303.20, and in accordance with subsection (c) of this section;

(4) Have the authority to establish rules necessary for the organization and governance of the Board it deems necessary;

(5) Have the authority to establish rules necessary for the management of the library;

(6) Have the authority to prescribe rules for borrowing and returning books;

(7) Have the authority to fix, assess, and collect fines and penalties for the loss or injury to books and other library materials, and for the retention of books and other library materials beyond the period fixed by library rules;

(8) Account for and control, under the rules of the library and the laws of the District of Columbia, the spending of all public funds received by the library;

(9) Make an annual report to the Mayor and the Council of the District of

Columbia on the operation of the public library on or before February 1st of each calendar year for the preceding fiscal year;

(10) Select and appoint a professional librarian as librarian of the public library to supervise and manage the day-to-day operations of the library, in accordance with the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (Chapter 6 of Title 1). The librarian of the public library shall appoint assistants and employees the Board deems necessary for the proper operation of the library, in accordance with the provisions of subchapter VIII of Chapter 6 of Title 1;

(11) Encourage and assist in the establishment of community support groups in the branch libraries which may advise the Board on library matters, gather information on the needs of the library, promote improvement of library services, and provide general support of library activities;

(12) Meet at least once every 2 months;

(13) Notwithstanding any other provision of law, the Board of Trustees of the District of Columbia Public Library is authorized to hire a fund raiser and to raise funds from private sources and expend those funds for the benefit of the District of Columbia Public Library, with the prior review and approval of the Chief Financial Officer for the District of Columbia and the District of Columbia Financial Responsibility and Management Assistance Authority.

(b) All monies received by the Board for fines and penalties shall be paid to the unrestricted fund balance of the General Fund of the District of Columbia.

(c)(1) The Board may issue rules to govern its procurement. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day period, the proposed rules shall be deemed disapproved.

(2) The Board may exercise procurement authority consistent with rules promulgated under the Act until the Board promulgates rules under paragraph (1) of this subsection.

(June 3, 1896, 29 Stat. 244, ch. 315, § 5; Apr. 1, 1926, 44 Stat. 230, ch. 98, § 5; Mar. 3, 1979, D.C. Law 2-139, § 3205(jjj), 25 DCR 5740; Sept. 5, 1985, D.C. Law 6-17, § 2, 32 DCR 3582; Apr. 12, 1997, D.C. Law 11-259, § 316, 44 DCR 1423; Oct. 21, 1998, 112 Stat. 2681-146, Pub. L. 105-277, § 156; Mar. 2, 2007, D.C. Law 16-197, § 2, 53 DCR 8827; Mar. 3, 2010, D.C. Law 18-111, § 4041, 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, § 9054(c), 58 DCR 6226.)

Cross references. — Effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 37-105. 1973 Ed., § 37-105.

Effect of amendments. — D.C. Law 16-197, in subsec. (a)(1), deleted “provided, however, that contracting for the maintenance of the library and the erection or enlargement of library buildings shall be carried out by the Office of Contracting and Procurement on behalf of the Board,” following “of the library;” rewrote subsec. (a)(3); and added subsec. (c).

D.C. Law 18-111 rewrote subsecs. (a)(1), (3), and added subsec. (c).

D.C. Law 19-21, in subsec. (b), substituted “unrestricted fund balance of the General Fund of the District of Columbia” for “District of Columbia Treasurer for credit to the public library’s Book Purchase Fund”.

Temporary Amendment of Section. — Section 2 of D.C. Law 18-45, in subsec. (a), deleted all text following the semicolon in par. (1), and rewrote par. (3) to read as follows:

“(3) Have the authority to procure all goods

and services necessary to operate the library system, independent of the Office of Contracting and Procurement and the requirements of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.) ('Act'), except as specified in section 320 of the Act, and in accordance with subsection (c) of this section;"; and added subsec. (c) to read as follows:

"(c)(1) The rules published at page 493 of volume 55 of the District of Columbia Register (55 DCR 493) are revived. The Board may exercise procurement authority consistent with rules published at page 493 of volume 55 of the District of Columbia Register (55 DCR 493) until the rules are amended or superseded.

"(2) The Board may issue rules to implement the provisions of this section. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within the 45-day period, the proposed rules shall be deemed disapproved."

Section 5(b) of D.C. Law 18-45 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Library Procurement Emergency Amendment Act of 2006 (D.C. Act 16-483, October 18, 2006, 53 DCR 8645).

For temporary (90 day) amendment of section, see § 2 of Library Procurement Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-661, December 28, 2006, 54 DCR 1114).

For temporary (90 day) amendment of section, see § 2 of DCPL Procurement Emergency Amendment Act of 2009 (D.C. Act 18-93, May 20, 2009, DCR 4311).

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-17. — For legislative history of D.C. Law 6-17, see Historical and Statutory Notes following § 39-104.

Legislative history of Law 11-259. — Law 11-259, the "Procurement Reform Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-705, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996,

respectively. Signed by the Mayor on January 3, 1997, it was assigned Act No. 11-526 and transmitted to both Houses of Congress for its review. D.C. Law 11-259 became effective on April 12, 1997.

Legislative history of Law 16-197. — Law 16-197, the "Library Procurement Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-562, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 23, 2006, it was assigned Act No. 16-492 and transmitted to both Houses of Congress for its review. D.C. Law 16-197 became effective on March 2, 2007.

Legislative history of Law 18-111. — Law 18-111, the "Fiscal Year 2010 Budget Support Act of 2009", was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Legislative history of Law 19-21. — Law 19-21, the "Fiscal Year 2012 Budget Support Act of 2011", was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 4040 of D.C. Law 18-111 provided that subtitle E of title IV of the act may be cited as the "DCPL Procurement Amendment Act of 2009".

Resolutions. — Resolution 17-263, the "Library Procurement Regulations Approval Resolution of 2007", was approved effective July 10, 2007.

Editor's notes. — Sunset provision: Section 4 of D.C. Law 16-197 provided: "This act shall expire 2 years after its effective date."

Sections 2, 3 and 5 of D.C. Law 18-368 provided:

"Sec. 2. Definitions.

"For the purposes of this act, the term:

"(1) 'Deed Transfer and Recordation Taxes' means the revenue resulting from the imposition of the taxes under section 303 of the District of Columbia Deed Recordation Tax Act of 1962, approved March 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1103), and section 47-903 of the District of Columbia Official Code.

"(2) 'Developer' means Eastbanc-W.D.C. Partners, LLC., its successors, affiliates, and assigns, either collectively or individually.

"(3) 'District Property' means the West End Library Property, Special Operations/MPD Building Property, and the West End Fire Station Property, as defined in paragraph (9) of this section.

"(4) 'Fund' means the West End Library and Fire Station Maintenance Fund established by section 4.

"(5) 'Fund Managers' means the Chief Librarian of the District of Columbia Public Library and the Mayor.

"(6) 'LDDA' means the Land Development and Disposition Agreement between the District and the Developer pursuant to the West End Parcels Disposition Approval Resolution of 2010, effective July 13, 2010 (Res.18-553; 57 DCR 7623).

"(7) 'Maintenance Agreement' means a West End Library and Fire Station Maintenance Agreement by and among the Fund Managers, and Developer, or its successors, or assigns, and established pursuant to section 5.

"(8) 'Project' means the acquisition, development, construction, installation, and equipping of the multi-use project to be located on the Property, to include:

"(A) A new library, estimated to contain approximately 20,000 gross square feet;

"(B) A new fire station, estimated to contain approximately 16,000 gross square feet;

"(C) A residential building on Square 37 estimated to contain approximately 224,390 gross square feet with approximately 153 units;

"(D) A residential rental building, including affordable housing units in Square 50, subject to public financial assistance;

"(E) Retail space estimated to contain approximately 9,600 gross square feet; and

"(F) Below-grade parking.

"(9) 'Property' means the following parcels of land located in Squares 37 and 50 in the District:

"(A) Square 37, Lot 836 ('West End Library Property');

"(B) Square 37, Lot 837 ('Special Operations/MPD Building Property');

"(C) Square 37, Lot 855 ('Developer Property');

"(D) Square 50, Lot 822 ('West End Fire Station Property'); and

"(E) Related air rights parcels.

"(10) 'West End Fire Station' means a new fire station in Square 50 in the West End to be constructed by the Developer pursuant to the LDDA.

"(11) 'West End Library' means a new neighborhood branch library to be constructed in Square 37 in the West End by the Developer pursuant to the LDDA.

"Sec. 3. Authorization.

"(a) Notwithstanding any statutory and regulatory process established regarding contracting and procurement, the District of Columbia

Board of Library Trustees is authorized to procure the services of Developer for the design, development, and construction of that portion of the Project to include the West End Library, subject to a cost cap as established pursuant to agreement between the District and Developer.

"(b) Notwithstanding any statutory regulatory process established regarding contracting and procurement, the Mayor is authorized to procure the services of Developer for the design, development, and construction of that portion of the Project to include the West End Fire Station, subject to a cost cap as established pursuant to agreement between the District and Developer.

"(c)(1) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.), and the Procurement Practices Reform Act of 2010, passed on 2nd reading on December 7, 2010 (Enrolled version of Bill 18-610), shall not apply to the procurement authorized under subsections (a) and (b) of this subsection.

"(2) The regulations set forth in Chapter 43 of Title 19 and Title 27 of the District of Columbia Municipal Regulations shall not apply to the procurement authorized under subsections (a) and (b) of this subsection."

"Sec. 5. West End Library and Fire Station Maintenance Agreement.

"(a) Notwithstanding any other provision of law, the Mayor and the Board of Library Trustees are authorized to enter into a maintenance agreement with a contractor to provide supplemental maintenance services to the West End Library and West End Fire Station in order to:

"(1) Maintain the cleanliness and operability of the exterior facade of the West End Fire Station and West End Library to at least the same standards as the larger buildings of which they are a part;

"(2) Maintain the cleanliness and operability of the interior of the West End Fire Station and West End Library, including lighting, window coverings, floors and floor coverings, bathrooms and other public spaces, FF&E, and the HVAC systems to at least the same standards as the larger buildings of which they are a part; (3) Pay for supplemental external building and grounds maintenance;

"(4) Pay for property, casualty, and liability insurance (premiums and deductibles) attributable to the new library and fire station components of the Project (including common elements); and

"(5) Provide a capital replacement reserve for the new library and the new fire station as determined to be needed by the Chief Librarian of the District of Columbia Public Library and the Mayor.

"(b)(1) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.), and the Procurement Practices Reform Act of 2010, passed on 2nd reading on December 7, 2010 (Enrolled version of Bill

18-610), shall not apply to the Maintenance Agreement.

"(2) The regulations set forth in Chapter 43 of Title 19 and Title 27 of the District of Columbia Municipal Regulations shall not apply to the Maintenance Agreement."

CASE NOTES

ANALYSIS

Funding.

Rules and regulations.

Sue or be sued power.

Funding.

Mayor was authorized to reduce funds allocated to District of Columbia public library in budget enacted by District's Council and in Appropriations Act enacted by Congress, in attempting to balance District's budget, despite library's status as statutory independent agency; mayor had statutory duty to balance budget regardless of sums previously appropriated, classification of library as statutory independent agency did not make library independent of mayor's fiscal authority, and neither Council's budget nor Appropriations Act contained any language requiring that reductions be made only in funding of agencies under mayor's control. D.C. Code 1981, §§ 1-299.6, 1-1502(5), 37-101, 37-106, 47-301(a)(1), 47-310(a)(9), 47-313(d); District of Columbia Appropriations Act, 1990, § 103, 103 Stat. 1267. *Hazel v. Barry*, 580 A.2d 110, 1990 D.C. App. LEXIS 226 (1990).

Rules and regulations.

Public library regulation authorizing library personnel to deny access to patrons based on "objectionable" appearance was subject to review under "narrowly tailored" standard, requiring that regulation be narrowly tailored to achieve significant government interest, on challenge to regulation as violative of First Amendment; regulation precluded patrons subject to it from making any use of library. *Armstrong v. D.C. Pub. Library*, 154 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 12585 (2001).

Public library regulation authorizing library personnel to deny access to patrons based on "objectionable" appearance, including "barefooted, bare-chested, body odor, filthy clothing, etc.," was vague under First Amendment; regulation supplied neither legal standard for, nor

specific definition of, "objectionable," library personnel had difficulty applying regulation, and examples given also were not defined. *Armstrong v. D.C. Pub. Library*, 154 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 12585 (2001).

Public library regulation authorizing library personnel to deny access to patrons based on "objectionable" appearance, including "barefooted, bare-chested, body odor, filthy clothing, etc.," was overbroad under First Amendment; term "etc." and discretion accompanying its interpretation created standardless test placing patrons rights of access to ideas and information in realistic danger. *Armstrong v. D.C. Pub. Library*, 154 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 12585 (2001).

Public library regulation authorizing library personnel to deny access to patrons based on "objectionable" appearance, including "barefooted, bare-chested, body odor, filthy clothing, etc.," was vague, vested undue discretion in library staff, and failed to give adequate notice to homeless person who was barred from library under regulation of what was prohibited by regulation, all in violation of due process clause; homeless person was not informed which provision of regulation he had violated, regulation contained no guidelines for application, which allowed staff to apply it according to their own discretion, and precluded person from predicting how it would be applied in the future. *Armstrong v. D.C. Pub. Library*, 154 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 12585 (2001).

Sue or be sued power.

Homeless person could not sue District of Columbia Library Board of Trustees to challenge library regulation authorizing library personnel to bar patrons on basis of "objectionable" appearance, since Board was not authorized to sue or be sued under District of Columbia law. *Armstrong v. D.C. Pub. Library*, 154 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 12585 (2001).

§ 39-106. Mayor authorized to seek appropriations for library expenses.

The Mayor of the District is authorized to include in his annual estimates for appropriation sums as he may deem necessary for the proper maintenance of

the library, including branches, for the purchase of land for sites for library buildings, and for the erection and enlargement of necessary library buildings.

(June 3, 1896, 29 Stat. 244, ch. 315, § 6, as added Apr. 1, 1926, 44 Stat. 230, ch. 98, § 6; Apr. 20, 1999, D.C. Law 12-264, § 39, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 37-106. 1973 Ed., § 37-106.

Emergency legislation. — For temporary (90 day) addition, see § 1051 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Reductions in funding.

Mayor was authorized to reduce funds allocated to District of Columbia public library in budget enacted by District's Council and in Appropriations Act enacted by Congress, in attempting to balance District's budget, despite library's status as statutory independent agency; mayor had statutory duty to balance budget regardless of sums previously appropriated, classification of library as statutory independent agency did not make library indepen-

dent of mayor's fiscal authority, and neither Council's budget nor Appropriations Act contained any language requiring that reductions be made only in funding of agencies under mayor's control. D.C. Code 1981, §§ 1-299.6, 1-1502(5), 37-101, 37-106, 47-301(a)(1), 47-310(a)(9), 47-313(d); District of Columbia Appropriations Act, 1990, § 103, 103 Stat. 1267. *Hazel v. Barry*, 580 A.2d 110, 1990 D.C. App. LEXIS 226 (1990).

§ 39-107. Purchase, rent, and sale of library-related items; use of profits.

The Board shall have power to purchase, rent, and sell library-related items, including, but not limited to, the following: film catalogs and other publications of the library; publications and items of special interest commemorating individuals and events connected with the library; unneeded books; video recordings; reproductions of unique library materials; and promotional items and souvenirs such as book tote bags, pens, notebooks, and postcards. Any profits realized or proceeds collected shall be deposited into the unrestricted fund balance of the General Fund of the District of Columbia.

(June 3, 1896, ch. 315, § 7, as added Oct. 8, 1981, D.C. Law 4-38, § 2, 28 DCR 3389; Mar. 14, 1984, D.C. Law 5-55, § 2, 30 DCR 6284; Sept. 14, 2011, D.C. Law 19-21, § 9053, 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 37-106.1.

Effect of amendments. — D.C. Law 19-21 substituted “or proceeds collected shall be deposited into the unrestricted fund balance of the General Fund of the District of Columbia” for “shall be used to purchase books and other publications”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 4022(a) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 4022(a) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 4-38. — Law 4-38 was introduced in Council and assigned

Bill No. 4-221, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-65 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-55. — Law 5-55 was introduced in Council and assigned Bill No. 5-214, which was referred to the Committee on Libraries, Recreation and Related Youth Affairs. The Bill was adopted on first and second readings on October 18, 1983, and November 1, 1983, respectively. Signed by the Mayor on November 21, 1983, it was assigned Act No. 5-81 and transmitted to both Houses of Congress for its review.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 39-105.

§ 39-107a. Authority to accept donations and gifts.

(a) The Board of Library Trustees may accept donations, gifts by devise or bequest, grants, and any other type of asset, except real property as defined in § 10-801.01, from individuals, clubs, groups, corporations, partnerships, and other governmental entities. The Board shall approve any donation, gift, grant, or asset with a value of \$10,000 or more, but may delegate the acceptance of any donation, gift, grant, or asset with a value of less than \$10,000 to the librarian of the public library.

(b) The Board shall manage the property or funds in accordance with the provisions or conditions of the donation, gift, grant, or other type of asset, including the investment of the principal of the property or funds.

(c) All monetary donations permitted under subsection (a) of this section shall be made available to the District of Columbia Public Library through the private grant revenue source included in the District of Columbia Public Library's annual operating budget.

(d) The Board shall issue rules to implement this section. The rules shall govern the acceptance and use of donations and gifts, record-keeping requirements, audit procedures, accessibility of records for public inspection, and any other areas that the Board considers appropriate.

(June 3, 1896, 29 stat. 244, ch. 315, § 7a, as added Mar. 14, 2007, D.C. Law 16-268, § 5(b), 54 DCR 833.)

Legislative history of Law 16-268. — Law 16-268, the “Public Charter School Assets and Facilities Preservation Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-624, which was referred to Committee on Education, Libraries and Recreation. The Bill was adopted on first and second read-

ings on December 6, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-624 and transmitted to both Houses of Congress for its review. D.C. Law 16-268 became effective on March 14, 2007.

§ 39-108. Confidentiality of circulation records.

(a) Circulation records maintained by the public library in the District of Columbia which can be used to identify a library patron who has requested, used, or borrowed identified library materials from the public library and the specific material that patron has requested, used, or borrowed from the public library, shall be kept confidential, except that the records may be disclosed to officers, employees, and agents of the public library to the extent necessary for the proper operation of the public library.

(b)(1) Circulation records shall not be disclosed by any officer, employee, or agent of the public library to a 3rd party or parties, except with the written permission of the affected library patron or as the result of a court order.

(2) A person whose records are requested pursuant to paragraph (1) of this subsection may file a motion in the Superior Court of the District of Columbia requesting that the records be kept confidential. The motion shall be accompanied by the reasons for the request.

(3) Paragraph (1) of this subsection shall not operate to prohibit the officers of the public library from disclosing relevant information on a library patron to the Corporation Counsel of the District of Columbia or legal counsel retained to represent the public library in a civil action.

(4) Within 2 working days after receiving a subpoena issued by the court for public library records, the public library shall send a copy of the subpoena and the following notice, by certified mail, to all affected library patrons:

“Records or information concerning your borrowing records in the public library in the District of Columbia are being sought pursuant to the enclosed subpoena.

“In accordance with the District of Columbia Confidentiality of Library Records Act of 1984, these records will not be released until 10 days from the date this notice was mailed.

“If you desire that these records or information not be released, you must file a motion in the Superior Court of the District of Columbia requesting that the records be kept confidential, and state your reasons for the request. A sample motion is enclosed.

“You may wish to contact a lawyer. If you do not have a lawyer, you may call the District of Columbia Bar Lawyer Referral Service.”

(5) The public library shall not make available any subpoenaed materials until 10 days after the above notice has been mailed.

(6) Upon application of a government authority, the notice required by paragraph (4) of this subsection may be waived by order of an appropriate court if the presiding judge finds that:

(A) The investigation being conducted is within the lawful jurisdiction of the government authority seeking the records;

(B) There is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; or

(C) There is reason to believe that the notice will result in:

- (i) Endangering the life or physical safety of any person;
- (ii) Flight from prosecution;

(iii) Destruction of or tampering with evidence;
 (iv) Intimidation of potential witnesses; or
 (v) Otherwise seriously jeopardizing an investigation or official proceeding.

(7) The term “government authority”, as used in paragraph (6) of this subsection, means any federal, state, or local government agency or department.

(c) The Board of Library Trustees may issue rules necessary to implement this section.

(d) Unless otherwise authorized or required by law, any officer, employee, or agent of the public library who shall violate any provision of this section or any rules issued pursuant to it commits a misdemeanor, and upon conviction shall be punished by a fine of not more than \$300. The aggrieved public library patron may also bring a civil action against the individual violator for actual damages or \$250, whichever is greater, reasonable attorneys’ fees, and court costs.

(June 3, 1896, ch. 315, § 8, as added Mar. 13, 1985, D.C. Law 5-128, § 2, 31 DCR 5187; Apr. 20, 1999, D.C. Law 12-264, § 40, 46)

Prior Codifications. — 1981 Ed., § 37-106.2.

Legislative history of Law 5-128. — Law 5-128, the “District of Columbia Confidentiality Library Records Act of 1984,” was introduced in Council and assigned Bill No. 5-401, which was referred to the Committee on Libraries, Recreation and Related Youth Affairs. The Bill was adopted on first and second readings on July 10, 1984, and September 12, 1984, respectively.

Signed by the Mayor on October 1, 1984, it was assigned Act No. 5-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 39-106.

References in text. — The “District of Columbia Confidentiality of Library Records Act of 1984,” referred to in (b)(4), is D.C. Law 5-128.

§ 39-109. Establishment of the Library Enhancement Task Force.

There is established a Library Enhancement Task Force (“Task Force”) to serve as a collaborative body to assess, support, and implement strategies to fund the enhancement and development of the District of Columbia Public Library (“DCPL”) system.

(June 3, 1896, 29 Stat. 244, ch. 315, § 9, as added Apr. 4, 2006, D.C. Law 16-78, § 2, 53 DCR 802.)

Legislative history of Law 16-78. — Law 16-78, the “Library Enhancement, Assessment, and Development Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-49 which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings

on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-264 and transmitted to both Houses of Congress for its review. D.C. Law 16-78 became effective on April 4, 2006.

§ 39-110. Membership and organization of the Library Enhancement Task Force.

(a)(1) The Task Force shall be comprised of the following 11 members:

- (A) The Mayor, or his or her designee;
- (B) The Chairperson of the Committee on Education, Libraries, and Recreation of the Council of the District of Columbia, or his or her designee;
- (C) The Chairperson of the Committee on Economic Development of the Council of the District of Columbia, or his or her designee;
- (D) The Deputy Mayor for Planning and Economic Development, or his or her designee;
- (E) The Deputy Mayor for Children, Youth, Families and Elders, or his or her designee;
- (F) The Chief Financial Officer, or his or her designee;
- (G) The President of the Board of Library Trustees; the Chairperson of the Board of Library Trustees' Facilities Committee; and a third member of the Board of Library Trustees designated by the Board President; and
- (H) Two public members, one of whom shall be appointed by the Mayor and one of whom shall be appointed by the Council by resolution, to serve 3-year terms.

(2) Vacancies occurring in the Task Force shall be filled in the same manner as the original appointees.

(b) The President of the Board of Library Trustees shall serve as Chairperson.

(c) The following 3 persons, or their designees, shall serve as ex-officio, nonvoting members of the Task Force:

- (1) The Director of the District of Columbia Public Library;
- (2) The Superintendent of the District of Columbia Public Schools; and
- (3) The President of the University of the District of Columbia.

(d) Each member shall serve without compensation, except that members may receive reimbursement for expenses incurred in the service of the Task Force.

(e) The DCPL shall provide staffing for the Task Force.

(June 13, 1896, 29 Stat. 244, ch. 315, § 10, as added Apr. 4, 2006, D.C. Law 16-78, § 2, 53 DCR 802.)

Legislative history of Law 16-78. — For Law 16-78, see notes following § 39-109.

§ 39-111. Duties of the Task Force.

(a) The Task Force shall:

(1) Review:

- (A) The District of Columbia Comprehensive Plan;
- (B) The DCPL Capital Construction/Renovation Master Plan for Branch Libraries;
- (C) The DCPL Building Condition Survey;
- (D) The DCPL Strategic Business Plan 2005-2006;

(E) Any revisions to the plans set forth in subparagraphs (A) through (D) of this paragraph; and

(F) The recommendations of the Mayor's Blue Ribbon Task Force on the Future of the District of Columbia Public Library System;

(2) Identify methods to integrate the facility and programming needs of the DCPL, and other educational, recreational, and community needs into the District's planning and economic development opportunities;

(3) Assess and recommend methods of using DCPL assets to raise funds to modernize and enhance the DCPL system, including:

(A) Developing mixed-use projects that incorporate library facilities with revenue-producing ventures;

(B) Selling or leasing air rights above library buildings; and

(C) Selling or leasing facilities or real property used by or under the control of the DCPL;

(4) Within 180 days of April 4, 2006:

(A) Develop a strategic plan to use the revenue raised to fund the construction and renovation of library facilities and submit it to the Board of Library Trustees for approval and to the Mayor and Council for informational purposes; and

(B) Develop and submit to the Mayor and Council specific recommendations on actions the Mayor and Council may take to implement the strategic plan; and

(5) Following approval by the Board of Library Trustees of the strategic plan developed and submitted to the Board of Library Trustees, the Mayor, and the Council pursuant to paragraph (4) of this subsection, support the implementation of the plan.

(b) The Task Force shall provide opportunity for public input into the development of the strategic plan after providing notice of the opportunity to the public, including posting information on the DCPL Internet site.

(June 3, 1896, 29 Stat. 244, ch. 315, § 11, as added Apr. 4, 2006, D.C. Law 16-78, § 2, 53 DCR 802.)

Legislative history of Law 16-78. — For Law 16-78, see notes following § 39-109.

§ 39-112. Establishment of the Library Development Trust Fund.

(a) There is established within the General Fund of the District of Columbia a segregated, nonlapsing trust fund designated as the Library Development Trust Fund ("Trust Fund") into which shall be deposited any revenue generated from:

(1) The development of mixed-use projects involving library facilities;

(2) The sale or lease of air rights above library facilities;

(3) The sale or lease of library facilities or of real property used by or under the control of the DCPL;

(4) Any project developed pursuant to this subchapter;

(5) Any grants, gifts, or subsidies from public or private sources meant to assist in effecting the purpose of this subchapter; and

(6) Any return on investment of the assets of the Trust Fund.

(b) Monies deposited into the Trust Fund shall be used to solicit proposals for public-private partnerships and to finance public-private partnerships pursuant to this subchapter, such as the:

(1) Purchase of a library site and improvement;

(2) Construction of a library facility;

(3) Complete or partial furnishing of a library facility;

(4) Repair of a library facility;

(5) Renovation of a library facility; and

(6) Costs or expenses associated with an approved plan or project, including architectural, engineering, consulting, demolition, and legal costs.

(c) Pursuant to § 39-106, the Mayor shall submit to the Council, as part of the annual budget, a requested appropriation for expenditures from the Trust Fund, including a description of the specific approved plan or project for which the funds will be used.

(d) Funds deposited in the Trust Fund shall not revert to the fund balance of the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in this section, subject to authorization by Congress.

(June 3, 1898, 29 Stat. 244, ch. 315, § 12, as added Apr. 4, 2006, D.C. Law 16-78, § 2, 53 DCR 802.)

Legislative history of Law 16-78. — For Law 16-78, see notes following § 39-109.

§ 39-113. Competitive process for performance of work.

Within 60 days of approval of a strategic plan by the Board of Library Trustees pursuant to § 39-111, the Mayor shall initiate a competitive process for the performance of the work described in the plan. The Mayor shall issue one or more solicitations for competitive sealed bids or competitive sealed proposals for vendors who shall complete the project or projects for a guaranteed price by assembling the necessary team of designers, architects, developers, and other vendors, and posting a performance bond, or obtaining other insurance, to insure that design and time requirements shall be met for the guaranteed price. The Mayor shall consult closely with the Board of Library Trustees in preparing the solicitation or solicitations, and shall include a statement of work or specifications approved by the Board of Library Trustees.

(June 3, 1896, 29 Stat. 244, ch. 315, § 13, as added Apr. 4, 2006, D.C. Law 16-78, § 2, 53 DCR 802.)

Emergency legislation. — For temporary (90 day) addition of section, see § 4022(b) of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section,

see § 4022(b) of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 16-78. — For Law 16-78, see notes following § 39-109.

*Subchapter II. Miscellaneous.***§ 39-121. Takoma Park branch — Hours. [Repealed].**

Repealed.

(Mar. 4, 1913, 37 Stat. 943, ch. 150, § 1; Sept. 5, 1985, D.C. Law 6-17, § 3, 32 DCR 3582.)

Prior Codifications. — 1981 Ed., § 37-107.
1973 Ed., § 37-107.

legislative history of D.C. Law 6-17, see Historical and Statutory Notes following § 39-104.

Legislative history of Law 6-17. — For

§ 39-122. Same — Appropriation. [Repealed].

Repealed.

(Apr. 4, 1910, 36 Stat. 290, ch. 141; Sept. 5, 1985, D.C. Law 6-17, § 4, 32 DCR 3582.)

Prior Codifications. — 1981 Ed., § 37-108.
1973 Ed., § 37-108.

legislative history of D.C. Law 6-17, see Historical and Statutory Notes following § 39-104.

Legislative history of Law 6-17. — For

§ 39-123. Transfer of miscellaneous books to District public library.

Any books of a miscellaneous character no longer required for the use of any executive department, or bureau, or commission of the government, and not deemed an advisable addition to the Library of Congress, shall, if appropriate to the uses of the free public library of the District of Columbia, subject to applicable regulations under the Federal Property and Administrative Services Act of 1949, as amended, be turned over to that library for general use as a part thereof.

(Feb. 25, 1903, 32 Stat. 865, ch. 755, § 1; Oct. 31, 1951, 65 Stat. 706, ch. 654, § 2(1).)

Prior Codifications. — 1981 Ed., § 37-109.
1973 Ed., § 37-109.

as amended, referred to in this section, is the Act of June 30, 1949, 63 Stat. 377, ch. 288, as amended.

References in text. — The Federal Property and Administrative Services Act of 1949,

§ 39-124. Depository of Government publications.

The Public Library of the District of Columbia is hereby constituted a designated depository of governmental publications, and the Superintendent of Documents shall supply to such library 1 copy of each such publication, in the same form as supplied to other designated depositories.

(Sept. 28, 1943, 57 Stat. 568, ch. 243.)

Prior Codifications. — 1981 Ed., § 37-110.

1973 Ed., § 37-111.

SUBTITLE II. CULTURAL INSTITUTIONS.

CHAPTER 2. COMMISSION ON THE ARTS AND HUMANITIES.

Sec.

39-201. Authority of Council.

39-202. Definitions.

39-203. Establishment; composition; terms;
vacancies; compensation.

39-204. Powers.

Sec.

39-205. Administration.

39-205.01. Arts and Humanities Enterprise
Fund; establishment; accounting;
investment.

39-206. Miscellaneous provisions.

§ 39-201. Authority of Council.

The enactment of this chapter by the Council is done pursuant to the authority vested in the Council under § 1-204.04(b).

(Oct. 21, 1975, D.C. Law 1-22, § 2, 22 DCR 2083.)

Prior Codifications. — 1981 Ed., § 31-2001.

1973 Ed., § 31-1901.

Legislative history of Law 1-22. — Law 1-22 was introduced in Council and assigned Bill No. 1-25, which was referred to the Committee on Human Resources and Aging. The

Bill was adopted on first and second readings on May 13, 1975, and May 27, 1975, respectively. Enacted without signature by the Mayor on June 24, 1975, it was assigned Act No. 1-27 and transmitted to both Houses of Congress for its review.

§ 39-202. Definitions.

As used in this chapter:

(1) The term “Mayor” means the Mayor of the District of Columbia established under § 1-204.21.

(2) The term “Council” means the Council of the District of Columbia established under § 1-204.01.

(3) The term “Commission” means the Commission on the Arts and Humanities established by § 39-203.

(4) The term “arts” includes, but is not limited to, music (instrumental and vocal), dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, exhibition of those major art forms, and the study and application of the arts to the human environment.

(5) The term “humanities” includes, but is not limited to, the study of the following: language, both modern and classical; linguistics; literature; history; jurisprudence; philosophy; archeology; comparative religion; ethics; the history, criticism, theory, and practice of the arts; those aspects of the social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to the relevance of the humanities to the current conditions of national life.

(6) The term “public art” means sculptures, murals, mosaics, bas-reliefs, frescoes, tapestries, monuments, fountains, environmental designs, and other

visual art forms that are intended to enhance the aesthetic quality of a public building, park, street, or sidewalk or other public place with which they are physically or spatially connected. The term “public art” shall not include landscape design or the incidental ornamentation of functional structural elements or accessories unless designed by a visual artist as part of an artwork design authorized by the Commission.

(7) The term “Fund” means the Arts and Humanities Enterprise Fund established by § 39-205.01.

(Oct. 21, 1975, D.C. Law 1-22, § 3, 22 DCR 2083; June 25, 1986, D.C. Law 6-125, § 2(a), 33 DCR 2945; Jan. 31, 1998, D.C. Law 12-42, § 2(a), 44 DCR 5577.)

Prior Codifications. — 1981 Ed., § 31-2002.

1973 Ed., § 31-1902.

Legislative history of Law 1-22. — For legislative history of D.C. Law 1-22, see Historical and Statutory Notes following § 39-201.

Legislative history of Law 6-125. — Law 6-125 was introduced in Council and assigned Bill No. 6-143, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 25, 1986, and April 15, 1986, respectively. Signed by the Mayor on May 2, 1986, it was assigned Act No. 6-161 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-42. — Law 12-42, the “Arts and Humanities Enterprise Fund Establishment Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-13, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 3, 1997, and June 17, 1997, respectively. Signed by the Mayor on July 3, 1997, it was assigned Act No. 12-106 and transmitted to both Houses of Congress for its review. D.C. Law 12-42 became effective on January 31, 1998.

§ 39-203. Establishment; composition; terms; vacancies; compensation.

(a) In order to evaluate and initiate action on matters relating to the arts, to encourage programs and the development of programs which promote progress in the arts, there is established, in the Office of the Mayor, in the District of Columbia, a commission to be known as the Commission on the Arts and Humanities. The Commission shall consist of 18 members appointed by the Mayor, with the advice and consent of the Council, in accordance with § 1-523.01. Each member appointed to the Commission shall be a person who has displayed an interest or an ability in 1 of the various fields of the arts or humanities and/or has been active in the furtherance of the arts or humanities in the District of Columbia. Members shall be appointed to ensure that they are representative of all the various geographic areas and neighborhoods within the District of Columbia.

(b) Members of the Commission shall serve terms not to exceed 3 years, which shall regularly commence on July 1st in the year of appointment and expire on June 30th 3 years later. All terms shall be staggered so that 6 terms expire each year on June 30th beginning in 1982. Members may be reappointed but may not serve more than 2 consecutive terms.

(c) Should a vacancy occur, a successor shall be appointed by the Mayor within 30 days, with the advice and consent of the Council to serve until the end of the term of the member whom that successor succeeds. Failing to receive

the nomination within the 30 days, the Council shall appoint a person to fill the vacancy. Members of the Commission on the Arts and Humanities established under Organization Order No. 74-4 of January 7, 1974, issued by the Commissioner of the District of Columbia, shall continue to serve until the members of the Commission established under this chapter are appointed and qualify. The Mayor shall nominate members to the new Commission within 30 days of October 21, 1975.

(d) The Mayor shall nominate the Chairperson for the Commission.

(e) Members of the Commission shall serve without compensation, but shall be entitled to receive, in accordance with applicable District of Columbia regulations, reimbursement for expenses incurred while actually performing duties vested in the Commission.

(Oct. 21, 1975, D.C. Law 1-22, § 4, 22 DCR 2084; Mar. 10, 1982, D.C. Law 4-73, § 4(a), 28 DCR 5276; Oct. 19, 2002, D.C. Law 14-213, § 24, 49 DCR 8140.)

Cross references. — Candidates for Commission on the Arts and Humanities, disclosure of interests, see § 1-1106.02.

Mayoral nomination of Commission on the Arts and Humanities, review and approval of Council, see § 1-523.01.

Section references. — This section is referred to in § 39-202.

Prior Codifications. — 1981 Ed., § 31-2003.

1973 Ed., § 31-1903.

Effect of amendments. — D.C. Law 14-213, in subsec. (a), substituted "Council, in accordance with § 1-523.01." for "Council."

Legislative history of Law 1-22. — For legislative history of D.C. Law 1-22, see Historical and Statutory Notes following § 39-201.

Legislative history of Law 4-73. — Law 4-73 was introduced in Council and assigned Bill No. 4-318, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 27, 1981 and November 10, 1981, respec-

tively. Signed by the Mayor on December 2, 1981, it was assigned Act No. 4-120 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-213. — Law 14-213, the "Technical Amendments Act of 2002", was introduced in Council and assigned Bill No. 14-671, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-459 and transmitted to both Houses of Congress for its review. D.C. Law 14-213 became effective on October 19, 2002.

Editor's notes. — Former § 31-2003.1 1981 Ed., D.C. Law 4-73, § 4(b), provided as follows: "All official actions of the Commission on the Arts and Humanities taken by members appointed prior to March 10, 1982, are considered to be taken by a properly constituted Commission, regardless of the date of appointment and length of terms of its members."

§ 39-204. Powers.

The Commission shall:

(1) Take action concerning the needs of the residents of the District of Columbia for activities in the arts and humanities, and concerning the development and improvement of activities in the arts and humanities in the District of Columbia;

(2) Prepare an annual plan of artistic projects and productions in the District of Columbia meeting the requirements of §§ 5(c) and 5(g) of the National Foundation on the Arts and Humanities Act of 1965, and act as the designated state agency for the District of Columbia, as referred to in § 5(g)(2)(A) of the National Foundation on Arts and Humanities Act of 1965, as amended;

(3) Make grants to individuals and groups of individuals for projects and productions in the arts and humanities;

(4) Cooperate and be empowered to contract with governmental departments and agencies, private organizations, consultants, and residents of the District of Columbia to develop and undertake programs which will encourage maximum participation in activities in the arts and humanities and promote greater appreciation and enjoyment of the arts and humanities;

(5)(A) Accept donations, gifts by devise or bequest, grants, and any other type of asset from individuals, clubs, groups, corporations, partnerships, and other governmental entities;

(B) Manage any property or funds in accordance with the provisions or conditions of any donations, gifts, grants, or other transfers including the investment of the principal of such property and funds; and

(C) Deposit all funds raised pursuant to this subsection in the Fund.

(5A) Sell promotional items and prints of works of art owned by the Commission, at prices established by the Commission;

(5B) Loan works of art owned by the Commission to other entities, including museums, universities, and companies, either at no cost or at prices established by the Commission;

(6) Be empowered to appoint advisory panels in the various fields of the arts and humanities, as the Commission may deem necessary, the members of which shall serve without compensation;

(7) Adopt and modify bylaws and be empowered to adopt regulations as authorized by law; and

(8)(A) Develop and annually update, after holding a public hearing, a public arts plan that establishes priorities for the selection and location of public art for the upcoming fiscal year; and

(B) Prepare an annual report at the end of each fiscal year on the implementation of that year's public arts plan.

(1973, Ed., § 31-1904; Oct. 21, 1975, D.C. Law 1-22, § 5, 22 DCR 2086; June 25, 1986, D.C. Law 6-125, § 2(b)-(d), 33 DCR 2945; Jan. 31, 1998, D.C. Law 12-42, § 2(b), 44 DCR 5577; Sept. 24, 2010, D.C. Law 18-223, § 2002(a), 57 DCR 6242.)

Section references. — This section is referred to in § 39-205.

Prior Codifications. — 1981 Ed., § 31-2004.

Effect of amendments. — D.C. Law 18-223 added pars. (5A) and (5B).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2002(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 1-22. — For legislative history of D.C. Law 1-22, see Historical and Statutory Notes following § 39-201.

Legislative history of Law 6-125. — For legislative history of D.C. Law 6-125, see Historical and Statutory Notes following § 39-202.

Legislative history of Law 12-42. — For legislative history of D.C. Law 12-42, see Historical and Statutory Notes following § 39-202.

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 2001 of D.C. Law 18-223 provided that subtitle A of

title II of the act may be cited as the "Commission on the Arts and Humanities Artistic Sales Authorization Amendment Act of 2010".

References in text. — "Sections 5(c) and 5(g) of the National Foundation on the Arts and Humanities Act of 1965," referred to in para-

graph (2) of this section, is codified at 20 U.S.C. §§ 954(c) and (g).

"Section 5(g)(2)(A) of the National Foundation on Arts and Humanities Act of 1965, as amended," referred to in paragraph (2) of this section, is codified at 20 U.S.C. § 954(g)(2)(A).

§ 39-205. Administration.

(a) There shall be an Executive Director for the Commission who shall be appointed by the Commission. The Executive Director shall be the chief administrative officer of the Commission and shall be responsible for supervising the remainder of the staff of the Commission. He shall report regularly to the Commission on his activities. The Executive Director shall receive annual compensation fixed in accordance with the provisions of subchapter XI of Chapter 6 of Title 1.

(b) The Commission shall meet monthly, except when a meeting is cancelled by the Chairperson and a majority of the Commission. Special meetings of the Commission may be called by the Mayor, Council, Chairperson of the Commission, or upon the request of 5 members of the Commission.

(c) The Commission shall prepare and submit to the Mayor an annual budget to be included in the regular budget process of the District of Columbia developed in accordance with subchapter I of Chapter 3 of Title 47. In addition, each annual capital budget request submitted by the Mayor to the Council shall include as a discrete capital project a public arts fund in the amount of 1% of the total authority requested for the construction, renovation, and repair of public facilities and institutions, exclusive of land acquisition and infrastructure. Public arts fund financing shall be used by the Commission to fund the creation, installation, and maintenance of public art. The commissioning of artists and the selection, approval, placement, and maintenance of public art shall be the responsibility of the Commission in consultation with both the Department of Public Works and, if applicable, the public official or employee with chief administrative responsibility for the actual use of the public place affected.

(d) The Chairperson shall submit to the Mayor and the Council the annual reports of the Commission's activities, the public arts plan required by § 39-204(8), and any other plans, recommendations, and projections for the following year. These reports, plans, recommendations, and projections shall accompany the budget request referred to in subsection (c) of this section.

(Oct. 21, 1975, D.C. Law 1-22, § 6, 22 DCR 2087; Mar. 3, 1979, D.C. Law 2-139, § 3205(s), 25 DCR 5740; June 25, 1986, D.C. Law 6-125, § 2(e)-(f), 33 DCR 2945.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 31-2005.

1973 Ed., § 31-1905.

Legislative history of Law 1-22. — For

legislative history of D.C. Law 1-22, see Historical and Statutory Notes following § 39-201.

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill

was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-125. — For legislative history of D.C. Law 6-125, see Historical and Statutory Notes following § 39-202.

§ 39-205.01. Arts and Humanities Enterprise Fund; establishment; accounting; investment.

(a) There is established the Arts and Humanities Enterprise Fund ("Fund") to be operated by the Commission.

(a-1) There shall be deposited into the Fund:

- (1) Private donations, gifts, and grants; and
- (2) Proceeds of the sale or loan of works of arts, prints, and promotional items.

(b) The monies in the Fund shall not be a part of, nor lapse into, the General Fund of the District or any other fund of the District.

(c) By October 1st of each year, the Commission shall publish in the District of Columbia Register and in a report submitted to the Council, a specific accounting of how monies in the Fund were expended and any remaining balance. The accounting shall include the following:

- (1) The name of any donors or anonymous contributions;
- (2) The amounts of each contribution;
- (3) A description of any donated property; and
- (4) Identification of the programs or recreation centers where the funds have been expended.

(d) Proceeds in the Fund may be expended for the administration, improvement, and maintenance of property and programs managed by the Commission.

(e) Proceeds in the Fund may be invested in a prudent and reasonable manner consistent with applicable District government policies and procedures.

(Oct. 21, 1975, D.C. Law 1-22, § 6a, as added Jan. 31, 1998, D.C. Law 12-42, § 2(c), 44 DCR 5577; Apr. 20, 1999, D.C. Law 12-264, § 29, 46 DCR 2118; Sept. 24, 2010, D.C. Law 18-223, § 2002(b), 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 31-2005.1.

1981 Ed., § 31-2005.1.

Effect of amendments. — D.C. Law 18-223 added subsec. (a-1).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2002(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 12-42. — For legislative history of D.C. Law 12-42, see Historical and Statutory Notes following § 39-202.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 39-204.

§ 39-206. Miscellaneous provisions.

(a) The Mayor shall instruct the Office of Management and Budget Systems to coordinate with the Commission the establishment of a bookkeeping and accounting system to allow for swift transference of grant monies from the District government to a recipient, and shall instruct that Office, in concert with the Commission, to establish a voucher system which would also allow for the swift transference of funds from the District government to grant recipients.

(b) Nominees for the Commission shall be residents of the District of Columbia.

(c) The Commission shall establish procedures in its bylaws to handle conflicts of interest in the awarding of grants, when any commissioner has either a structural or fiduciary relationship with a grantee.

(Oct. 21, 1975, D.C. Law 1-22, § 7, 22 DCR 2088.)

Prior Codifications. — 1981 Ed., § 31-2006.
1973 Ed., § 31-1906.

Legislative history of Law 1-22. — For legislative history of D.C. Law 1-22, see Historical and Statutory Notes following § 39-201.

CHAPTER 3. MUSEUM OF THE CITY OF WASHINGTON.

Sec.

39-301. Established; designation as official cultural institution; duties.

39-302. Service of process.

39-303. Corporate powers.

39-304. Board of Directors — Established; composition; term of office; non-voting ex officio members.

Sec.

39-305. Board of Directors — Powers and responsibilities.

39-306. Cooperation of District government.

39-307. Dissolution.

39-308. Tax status.

39-309. Retention of Council's authority.

§ 39-301. Established; designation as official cultural institution; duties.

(a) There is established in the District of Columbia a membership nonprofit corporation which shall be known as the Museum of the City of Washington, Incorporated (hereinafter the "Museum").

(b) The Museum is designated as the official cultural institution in the District of Columbia for preserving the record of local achievement, history, culture, and scholarship in history and the arts of the District of Columbia.

(c) The Museum shall:

(1) Collect, preserve, and exhibit those historical artifacts, archival material, and works of art relating to the heritage of the citizenry of the District of Columbia; and

(2) Develop educational programs to enhance public understanding and appreciation of the District of Columbia.

(July 26, 1980, D.C. Law 3-79, § 2, 27 DCR 2546.)

Prior Codifications. — 1981 Ed., § 31-2101.

Legislative history of Law 3-79. — Law 3-79 was introduced in Council and assigned Bill No. 3-23, which was referred to the Committee on Human Services. The Bill was ad-

opted on first and second readings on April 22, 1980, and May 23, 1980, respectively. Signed by the Mayor on May 23, 1980, it was assigned Act No. 3-190 and transmitted to both Houses of Congress for its review.

§ 39-302. Service of process.

The Museum shall maintain a designated agent to accept service of process for the Museum. Notice to or service upon the agent is notice or service upon the Museum.

(July 26, 1980, D.C. Law 3-79, § 3, 27 DCR 2546.)

Prior Codifications. — 1981 Ed., § 31-2102.

Legislative history of Law 3-79. — For

legislative history of D.C. Law 3-79, see Historical and Statutory Notes following § 39-301.

§ 39-303. Corporate powers.

The Museum may exercise those powers conferred upon a nonprofit corporation in Chapters 1, 2, and 4 of Title 29.

(July 26, 1980, D.C. Law 3-79, § 4, 27 DCR 2546; July 2, 2011, D.C. Law 18-378, § 3(ee), 58 DCR 1720.)

Prior Codifications. — 1981 Ed., § 31-2103.

Effect of amendments. — D.C. Law 18-378 substituted “Chapters 1, 2, and 4 of Title 29” for “Chapter 3 of Title 29”.

Legislative history of Law 3-79. — For legislative history of D.C. Law 3-79, see Historical and Statutory Notes following § 39-301.

Legislative history of Law 18-378. — Law 18-378, the “District of Columbia Official Code Title 29 (Business Organizations) Enactment

Act of 2009”, was introduced in Council and assigned Bill No. 18-500, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 27, 2011, it was assigned Act No. 18-724 and transmitted to both Houses of Congress for its review. D.C. Law 18-378 became effective on July 2, 2011.

§ 39-304. Board of Directors — Established; composition; term of office; nonvoting ex officio members.

(a) A self-perpetuating Board of Directors is established to manage the affairs of the Museum. The Board shall have a minimum of 10 and a maximum of 23 members. Members of the Board shall include representatives of various geographical areas of the City, business people, and community leaders known for their interest in the arts, culture, and humanities.

(b) Each member of the initial Board, as established by this chapter, shall serve a term of 1 year. A successor Board shall be established according to the requirements of this chapter and those bylaws adopted by the initial Board. Each member of a successor Board shall serve a 3-year term.

(c) The initial Board shall have a minimum of 10 members and shall be composed at a minimum of the following individuals:

- (1) Ms. Leslie Buhler;
- (2) Ms. Charlotte Chapman;
- (3) Ms. Marcia Greenlee;
- (4) Mr. Earl James;
- (5) Mr. Leroi Johnson;
- (6) Mr. Tom Lodge;
- (7) Ms. Betty Monkman;
- (8) Mr. Harris Snettel;
- (9) Dr. Frank Taylor; and
- (10) Dr. James Walker.

(d) The initial Board shall appoint such additional or replacement members up to a maximum of 23 individuals, so that the initial Board meets the representational requirements of subsection (a) of this section. The members shall be appointed according to the bylaws adopted by the Board members listed in subsection (c) of this section.

(e) The following individuals shall be nonvoting ex officio members of the initial Board:

- (1) Dr. John Kinard, Anacostia Neighborhood Museum;
- (2) Dr. Phillip Ogilvie, D.C. Foundation for Creative Space;
- (3) Mr. William H. Press, Columbia Historical Society;
- (4) Mr. Fred Schwengel, J.S. Capitol Historical Society;

(5) Dr. Michael R. Winston, Moorland-Spingarn Research Center and Museum;

(6) Mr. Don Wolpe, Jewish Historical Society;

(7) Martin Luther King Library representative;

(8) Ms. Marion Dockery, Cultural Alliance of Greater Washington; and

(9) Ms. Cathy Smith, D.C. Public Schools.

(July 26, 1980, D.C. Law 3-79, § 5, 27 DCR 2546.)

Prior Codifications. — 1981 Ed., § 31-2104. legislative history of D.C. Law 3-79, see Historical and Statutory Notes following § 39-301.

Legislative history of Law 3-79. — For

§ 39-305. Board of Directors — Powers and responsibilities.

(a) The Board shall file such papers as may be required by the Recorder of Deeds of the District of Columbia.

(b) The Board may appoint such officers and employees as necessary to carry out the purposes of the Museum.

(c) The Board shall have the power to adopt, amend, or repeal bylaws for operation of the Museum.

(d) The Board may establish advisory committees to advise the Board and the officers of the Museum.

(e) In carrying out the purposes of this chapter, the Board shall encourage community participation from all areas of the City in the planning, development, and promotion of the Museum.

(f) The Board may appoint ex officio members of the Board.

(g) A member of the Board may be removed from office by a two-thirds vote of the remaining members of the Board.

(July 26, 1980, D.C. Law 3-79, § 6, 27 DCR 2546.)

Prior Codifications. — 1981 Ed., § 31-2105. legislative history of D.C. Law 3-79, see Historical and Statutory Notes following § 39-301.

Legislative history of Law 3-79. — For

§ 39-306. Cooperation of District government.

(a) The District of Columbia government may assist the Museum in carrying out this chapter by transferring or loaning to the Museum any District-owned real or personal property, facilities, furnishings, works of art, or historical artifacts. If the District of Columbia government transfers or loans any property to the Museum, the Museum may not transfer that property to any other person or entity without the express approval of the District government.

(b) The District of Columbia government may appropriate funds or loan personnel to the Museum on a permanent or temporary basis to assist the Museum in carrying out the purposes of this chapter.

(July 26, 1980, D.C. Law 3-79, § 7, 27 DCR 2546.)

Prior Codifications. — 1981 Ed., § 31-2106. legislative history of D.C. Law 3-79, see Historical and Statutory Notes following § 39-301.

Legislative history of Law 3-79. — For

§ 39-307. Dissolution.

Except as otherwise provided in a contract or legacy transferring or loaning property to the Museum, upon dissolution of the Museum as a corporation, all remaining assets shall be transferred to the Mayor of the District of Columbia. The Mayor shall make every effort to use the assets for the Museum and public education purposes as provided in this chapter.

(July 26, 1980, D.C. Law 3-79, § 8, 27 DCR 2546.)

Prior Codifications. — 1981 Ed., § 31-2107. legislative history of D.C. Law 3-79, see Historical and Statutory Notes following § 39-301.

Legislative history of Law 3-79. — For

§ 39-308. Tax status.

The Museum may engage in such activities that make it eligible for treatment as an organization described in § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.) which may be exempt from federal taxation under § 501(a) of the Internal Revenue Code (26 U.S.C.).

(July 26, 1980, D.C. Law 3-79, § 9, 27 DCR 2546; May 10, 1989, D.C. Law 7-231, § 37, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 31-2108.

Legislative history of Law 3-79. — For legislative history of D.C. Law 3-79, see Historical and Statutory Notes following § 39-301.

Legislative history of Law 7-231. — Law 7-231 was introduced in Council and assigned

Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 39-309. Retention of Council's authority.

The Council of the District of Columbia retains the full right to repeal or amend this chapter at any time.

(July 26, 1980, D.C. Law 3-79, § 10, 27 DCR 2546.)

Prior Codifications. — 1981 Ed., § 31-2109. legislative history of D.C. Law 3-79, see Historical and Statutory Notes following § 39-301.

Legislative history of Law 3-79. — For

CHAPTER 4. ARTS, CULTURAL, AND EDUCATIONAL FACILITIES SUPPORT.

Sec.

39-401. Definitions.

39-402. [Repealed].

39-402.01. Continuing authorization to provide public support.

Sec.

39-403. Economic assistance to Arena Stage.

39-404. Rulemaking.

39-405. Report to Council.

§ 39-401. Definitions.

For the purposes of this chapter, the term:

(1) "Arena Stage project" means the planning, development, acquisition, and construction of theater facilities and ancillary facilities to be located at 1101 6th Street, S.W., Washington, D.C. (Square 472, Lot 123).

(2) "Eligible organization" means an organization with real property described in § 47-1002(6), (7), (10), or (19) that has a signed lease for at least 10 years to carry out the purposes described in those paragraphs.

(3) "Capital costs" means the costs of materials and supplies for the construction, rehabilitation, renovation, or preparation of architectural or engineering plans for a physical facility located in the District.

(5) "Economic assistance" means a loan, grant, investment, or other form of expenditure of District monies.

(Apr. 5, 2005, D.C. Law 15-271, § 2, 52 DCR 820.)

Legislative history of Law 15-271. — Law 15-271, the "Arts, Cultural, and Educational Facilities Support Act of 2004", was introduced in Council and assigned Bill No. 15-193, which was referred to the Committee on Economic Development. The Bill was adopted on first and

second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-662 and transmitted to both Houses of Congress for its review. D.C. Law 15-271 became effective on April 5, 2005.

§ 39-402. Authorization to provide public support for arts, cultural, and educational facilities. [Repealed].

Repealed.

(Apr. 5, 2005, D.C. Law 15-271, § 3, 52 DCR 820; Mar. 3, 2010, D.C. Law 18-111, § 7181(a), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) repeal, see § 7181(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) repeal, see § 7181(a), of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 15-271. — For Law 15-271, see notes following § 39-401.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 39-105.

Short title. — Short title: Section 7180 of D.C. Law 18-111 provided that subtitle P of title VII of the act may be cited as the "Capital Grant Authority Repeal Amendment Act of 2009".

§ 39-402.01. Continuing authorization to provide public support.

Subject to the appropriation of funds or the identification of legally available funds, the Mayor may provide economic assistance to pay all or a portion of the capital costs incurred by a project approved by the Council prior to November 1, 2009.

(Apr. 5, 2005, D.C. Law 15-271, § 3a, as added Mar. 3, 2010, D.C. Law 18-111, § 7181(b), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 7181(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see

§ 7181(b), of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 39-105.

§ 39-403. Economic assistance to Arena Stage.

(a) The Council finds that the Washington Drama Society is an eligible organization, and that the Arena Stage Project will contribute to the redevelopment of the southwest waterfront and provide financial, economic, educational, and cultural benefits to the residents of the District.

(b) Subject to the appropriation of funds or the identification of legally available funds, the Mayor is authorized to provide economic assistance to the Washington Drama Society for the Arena Stage Project in an amount not to exceed \$20 million.

(Apr. 5, 2005, D.C. Law 15-271, § 4, 52 DCR 820.)

Legislative history of Law 15-271. — For Law 15-271, see notes following § 39-401.

Editor's notes. — Studio Theatre, Inc.: Sections 2 and 3 of D.C. Law 15-311 provided:

"Sec. 2. Findings.

"The Council finds:

"(1) The Studio Theatre, Inc. ('Studio') is an important cultural and economic asset of the District.

"(2) Studio is a not-for-profit organization and the largest actor training program in the District.

"(3) Studio moved to the 14th Street corridor in 1975, less than a decade after the area was hard hit by the riots of 1968. At the time of Studio's relocation, the 14th Street corridor was full of empty storefronts and littered with hypodermic needles and condoms.

"(4) Studio's relocation to the 14th Street corridor and its active involvement in the community has contributed significantly to the corridor's physical and economic revitalization.

"(5) In 2001, Studio announced a major plan to ensure the theatre's continued survival and vibrancy on 14th Street.

"(6) Studio purchased 2 adjacent, dilapidated

buildings and announced plans for a 4-theatre performance and training complex.

"(7) Studio is currently engaged in a capital campaign to finance the costs of acquiring, constructing, rehabilitating, furnishing, and equipping the additional space.

"(8) The capital campaign —although having already raised \$10 million —has produced lower than expected contributions from corporations and individuals.

"(9) Financial assistance from the District is necessary to avoid a funding shortfall and to ensure the successful completion and operation of the project.

"(10) Studio's expansion will provide significant cultural, social, educational, and economic benefits to residents of the District of Columbia and contribute to community improvements.

"Sec. 3. Authority to provide funds.

"The Mayor may provide up to \$2 million to The Studio Theatre, Inc., a not-for-profit District of Columbia corporation, to assist in financing the costs of expanding, rehabilitating, maintaining, furnishing, equipping, and making other capital improvements to The Studio Theatre. For the purposes of this paragraph,

the term "The Studio Theatre" means the facilities located at 1507 and 1509 14th Street, N.W., Washington, D.C. listed in the land re-

cords as Lots 830, 834, and 835 in Square 241, that are operated by The Studio Theatre, Inc."

§ 39-404. Rulemaking.

The Mayor shall promulgate rules and regulations, pursuant to Chapter 5 of Title 2, setting forth the criteria and standards for providing economic assistance under this chapter.

(Apr. 5, 2005, D.C. Law 15-271, § 5, 52 DCR 820.)

Legislative history of Law 15-271. — For Law 15-271, see notes following § 39-401.

§ 39-405. Report to Council.

Within 45 days after the end of each fiscal year, the Mayor shall submit to the Council a report that states in detail the amount of economic assistance provided under this chapter during the preceding fiscal year, and names the recipients of the economic assistance and their uses of that assistance.

(Apr. 5, 2005, D.C. Law 15-271, § 6, 52 DCR 820.)

Legislative history of Law 15-271. — For Law 15-271, see notes following § 39-401.

CHAPTER 5. FILM DC ECONOMIC INCENTIVE.

Sec.

39-501. Film DC Economic Incentive Fund.

39-501.01. Production incentives.

39-501.02. Infrastructure incentives.

39-501.03. Definitions.

Sec.

39-501.04. Motion picture and television production permits.

39-501.05. Film DC Special Account Fund.

39-502. Rulemaking.

§ 39-501. Film DC Economic Incentive Fund.

(a) There is hereby established a segregated, nonlapsing fund to be known as the Film DC Economic Incentive Fund ("Fund"). The Fund shall appear as a separate program line within the budget of the Office of Motion Picture and Television Development. The Fund shall be funded by annual appropriations. All funds deposited into the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in this chapter, subject to authorization by Congress in an appropriations act.

(b) Subject to § 39-501.01 and subject to the availability of funds, the Mayor may provide to an eligible production company, as an incentive for the production of movies, television shows, or other video productions in the District, a payment equal to the following:

(1) The sum of 42% of the company's qualified production expenditures that are subject to taxation in the District;

(2) The sum of 21% of the company's qualified production expenditures that are not subject to taxation in the District;

(3) The sum of 30% of the company's qualified personnel expenditures;

(4) The sum of 50% of the company's qualified job training expenditures; and

(5) The sum of 25% of the company's base infrastructure investment; provided, that if the base infrastructure investment is in a facility that may be used for purposes unrelated to production or postproduction activities, then the base infrastructure investment shall be eligible for the 25% incentive payment only if the Mayor determines that the facility will support and be necessary to secure production or postproduction activity.

(c) Subject to § 39-501.02 and subject to the availability of funds, the Mayor may provide to an applicant, as an incentive for the creation of production and postproduction facilities in the District, a payment of 25% of the taxpayer's base infrastructure investment; provided, that if all or a portion of the base infrastructure investment is in a facility that may be used for purposes unrelated to production or postproduction activities, then the base infrastructure investment shall be eligible for the 25% payment only if the Mayor determines that the facility will support and be necessary to secure production or postproduction activity.

(Mar. 14, 2007, D.C. Law 16-290, § 2, 54 DCR 984; July 18, 2008, D.C. Law 17-187, § 2, 55 DCR 6116; Mar. 3, 2010, D.C. Law 18-111, § 2071(a), 57 DCR 181.)

Effect of amendments. — D.C. Law 17-187, in subsec. (b)(1)(A), deleted “the lesser of 10% of qualified expenses or” following “not to exceed”.

D.C. Law 18-111, in the section heading and subsec. (a), deleted “Grant” following “Incentive”; and rewrote subssecs. (b) and (c).

Emergency legislation. — For temporary (90 day) addition, see § 2 of Film DC Economic Incentive Emergency Act of 2006 (D.C. Act 16-570, December 19, 2006, 54 DCR 8).

Legislative history of Law 16-290. — Law 16-290, the “Film DC Economic Incentive Act of 2006”, was introduced in Council and assigned Bill No. 16-935, which was referred to Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-649 and transmitted to both Houses of Congress for its review. D.C. Law 16-290 became effective on March 14, 2007.

Legislative history of Law 17-187. — Law 17-187, the “Film DC Economic Incentive Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-477 which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 20, 2008, it was assigned Act No. 17-381 and transmitted to both Houses of Congress for its review. D.C. Law 17-187 became effective on July 18, 2008.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 39-105.

Short title. — Short title: Section 2070 of D.C. Law 18-111 provided that subtitle H of title II of the act may be cited as the “Financial Incentives for Motion Picture and Television Productions Amendment Act of 2009”.

Editor’s notes. — Section 7085 of D.C. Law 17-219 repealed section 4 of D.C. Law 16-290.

§ 39-501.01. Production incentives.

(a) To qualify for a payment under § 39-501(b), an eligible production company shall:

(1) Spend at least \$250,000 in the District for the development, preproduction, production, or postproduction costs of a qualified production;

(2) File an application with the Mayor pursuant to subsection (b) of this section;

(3) Enter into an incentive agreement with the Mayor pursuant to subsection (d) of this section;

(4) Comply with the terms of the agreement; and

(5) Not be delinquent in a tax or other obligation owed to the District or be owned or under common control of an entity that is delinquent in a tax or other obligation owed to the District.

(b) An eligible production company seeking a payment under § 39-501(b) shall submit an application to the Mayor. The application shall be submitted in a form, and with such documentation and information, may be prescribed by the Mayor, including:

(1) An estimate of qualified production expenditures;

(2) An estimate of qualified personnel expenditures;

(3) An estimate of qualified job training expenditures; and

(4) An estimate of and total investment in qualified film and digital media infrastructure projects in the District associated with an identified qualified production.

(c) After receiving an application under subsection (b) of this section, the Mayor shall review the application and determine whether to enter into an incentive agreement pursuant to subsection (d) of this section with the eligible production company. In determining whether to enter into an incentive agreement with the eligible production company, the Mayor may consider:

(1) The potential that, in the absence of a payment under § 39-501.02(a), the qualified production will be produced in a location other than the District;

(2)(A) The qualified production is likely to promote the District as a tourist destination;

(B) The qualified production is likely to create contracting and procurement opportunities for certified business enterprises;

(C) The qualified production is likely to:

(i) Create jobs;

(ii) Job training opportunities; and

(iii) Apprenticeships for District residents;

(D) The qualified production will produce employment opportunities for District youth;

(E) The qualified production is likely to promote economic development and neighborhood revitalization in the District;

(F) A payment under § 39-501.02(a) is likely to attract private investment for the production of other qualified productions or base infrastructure investments in the District; and

(3) The record of the eligible production company in completing commitments to engage in a qualified production.

(d) An incentive agreement entered into by the Mayor and the eligible production company shall include the following provisions:

(1) The name of the eligible production company;

(2) The name and description of the qualified production;

(3) The eligible production company's:

(A) Estimated qualified production expenditures;

(B) Qualified personnel expenditures;

(C) Qualified job training expenditures; and

(D) The base infrastructure investment;

(4) A preliminary estimate of the payment to be made by the District pursuant to the agreement;

(5) Any obligations of the eligible production company, including obligations such a commitment to hire District residents, provide apprenticeship opportunities for District residents and youth, provide employment opportunities for District residents and youth, and to contract with certified business entities; and

(6) Any other provisions considered appropriate by the Mayor.

(e) If the Mayor determines that an eligible production company, after it completes the qualified production, has complied with the terms of the agreement entered into under this section, the Mayor shall provide to the company the payment authorized by § 39-501(b).

(f) The Mayor shall reserve funds sufficient to pay the amount identified in subsection (d)(4) of this section.

(Mar. 14, 2007, D.C. Law 16-290, § 2a, as added Mar. 3, 2010, D.C. Law 18-111, § 2071(b), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2071(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see

§ 2071(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 39-105.

§ 39-501.02. Infrastructure incentives.

(a) To be eligible for a payment under § 39-501(c), an approved applicant shall:

(1) Invest and expend at least \$250,000 for a qualified film and digital media infrastructure project in the District;

(2) File an application with the Mayor pursuant to subsection (b) of this section;

(3) Enter into an agreement with the Mayor pursuant to subsection (d) of this section;

(4) Comply with the terms of the agreement; and

(5) Not be delinquent in a tax or other obligation owed to the District, or be owned or under common control of an entity that is delinquent in a tax or other obligation owed to the District.

(b) An approved applicant seeking a payment under § 39-501(c) shall submit an application to the Mayor, in a form and with the documentation and information, including an estimate of total base infrastructure investment, as may be prescribed by the Mayor.

(c) After receiving an application under subsection (b) of this section, the Mayor shall review the application and determine whether to enter into an incentive agreement with the applicant pursuant to subsection (d) of this section. In determining whether to enter into the incentive agreement, the Mayor may consider:

(1) The potential that, in the absence of a payment under § 39-501(c), the qualified film and digital media infrastructure project in which the base infrastructure investment will be made will be constructed in a location other than the District, or not constructed at all;

(2) The extent to which the qualified film and digital media infrastructure project is likely to:

(A) Create contracting and procurement opportunities for certified business enterprises;

(B) Create jobs, job training opportunities, and apprenticeships for District residents and District youth;

(C) Promote economic development and neighborhood revitalization in the District;

(3) The extent to which the qualified film and digital media infrastructure project is likely to attract motion picture, television, and video production to the District; and

(4) The record of the applicant in completing commitments to engage in qualified film and digital media infrastructure projects.

(d) An incentive agreement entered into by the Mayor and the eligible production company shall include the following provisions:

- (1) The name of the applicant;
- (2) A description of the qualified film and digital media infrastructure project;
- (3) The applicant's estimated base investment;
- (4) A preliminary estimate of the payment to be made by the District pursuant to this agreement;
- (5) Any obligations of the eligible production company, including obligations such as a commitment to hire District residents, provide apprenticeship opportunities for District residents and youth, provide employment opportunities for District residents and youth, and to contract with certified business entities; and

(6) Any other provisions considered appropriate by the Mayor.

(e) If the Mayor determines, after the qualified film and digital media infrastructure project is complete, that an applicant has complied with the terms of the agreement under this section, the Mayor may provide to the company the payment authorized by § 39-501(c).

(Mar. 14, 2007, D.C. Law 16-290, § 2b, as added Mar. 3, 2010, D.C. Law 18-111, § 2071(b), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2071(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see

§ 2071(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 39-105.

§ 39-501.03. Definitions.

For the purposes of this chapter, the term:

(1) “Base infrastructure investment” means the cost, including fabrication and installation, expended by a person in the development of a qualified film and digital media infrastructure project for tangible assets of a type that are, or under the United States Internal Revenue Code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes that are physically located in the District for use in a business activity in the District and that are not mobile tangible assets. The term “base infrastructure investment” does not include qualified production expenditure or qualified personnel expenditure.

(2) “Below-the-line crew” means a person employed by an eligible production company for a qualified production after production begins and before production is completed, including a producer, director, writer, actor, or other person in a similar position.

(3) “Eligible production company” means an entity in the business of producing qualified productions.

(4) “Postproduction expenditure” means a direct expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special or visual effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack

production, dubbing, subtitling, addition of sound or visual effects, advertising, marketing, distribution, and related expenses.

(5) “Qualified film and digital media infrastructure project” means a film, video, television, or digital media production and postproduction facility located in the District, movable and immovable property and equipment related to the facility, and any other facility that is a necessary component of the primary facility. The term “qualified film and digital media infrastructure project” does not include a movie theater or other commercial exhibition facility.

(6) “Qualified job training expenditure” means salary and other expenditures paid by an eligible production company to provide qualified personnel with on-the-job training to upgrade or enhance the skills of the qualified personnel as a member of the below-the-line crew for a qualified production.

(7) “Qualified personnel” means a District resident that is legally eligible for employment.

(8) “Qualified personnel expenditure” means an expenditure made in the District directly attributable to the production or distribution of a qualified production that is a transaction subject to taxation in the District and is a payment of wages, benefits, or fees to below-the-line crew members, and includes a payment to a personal services corporation or professional employer organization for the services of qualified personnel as below-the-line crew members who are not residents of the District.

(9) “Qualified production” means motion picture, television, or video content created in whole or in part in the District, intended for nationwide distribution or exhibition by any means, including by motion picture, documentary, television programming, commercials, or internet video production and includes a trailer, pilot, or any video teaser associated with a qualified production. The term “qualified production” does not include:

(A) A production that:

- (i) Consists primarily of televised news or current events;
- (ii) Consists primarily of a live sporting event;
- (iii) Consists primarily of political advertising;

(iv) Primarily markets a product or service other than a qualified production; or

(B) A radio program.

(10)(A) “Qualified production expenditure” means a development, preproduction, production, or postproduction expenditure made in the District that is:

(i) Directly attributable to the production or distribution of a qualified production;

(ii) Is for the production or distribution of a qualified production;

(iii) In accordance with generally accepted entertainment industry practices; and

(iv) Not a qualified personnel expenditure.

(B) Qualified production expenditure includes the purchase of tangible personal property or services related to producing or distributing a qualified production, production work, production equipment, production software,

development work, postproduction work, postproduction equipment, postproduction software, set design, set construction, set operations, props, lighting, wardrobe, catering, lodging, use of vehicles directly attributable to the production or distribution of a qualified production, and any purchase of equipment relating to the duplication or market distribution of any content created or produced in the District, and payment of wages, benefits, or fees to any contractual or salaried employee excluding below-the-line crew who performs services in the District, including a payment to a personal services corporation or professional employer organization for the services of qualified personnel.

(Mar. 14, 2007, D.C. Law 16-290, § 2c, as added Mar. 3, 2010, D.C. Law 18-111, § 2071(b), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2071(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see

§ 2071(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 39-105.

§ 39-501.04. Motion picture and television production permits.

(a) The Mayor may issue a permit for the occupation of the public space for motion picture, television, and other media productions (“film permit”) pursuant to § 10-1141.03.

(b) The Mayor may impose a one-time fee for processing of the film permit application in the amount of \$30 per production.

(c) The film permit fee shall be \$150 per day per location to occupy public space or a public right-of-way.

(d) The Mayor may periodically revise the schedule of fees by rulemaking.

(e) The fees received by the Mayor from applications for and issuance of the film permits shall be deposited into the special account established by § 39-501.05.

(f) No permit may be transferred from one location to another.

(Mar. 14, 2007, D.C. Law 16-290, § 2d, as added Mar. 3, 2010, D.C. Law 18-111, § 2071(b), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2071(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see

§ 2071(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 39-105.

§ 39-501.05. Film DC Special Account Fund.

(a) There is established as a lapsing fund the Film DC Special Account Fund (“Fund”), which shall be used exclusively for the purposes set forth in subsection (b)(3) of this section. Any unexpended funds in the Film DC Special

Account Fund at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(b)(1) There shall be deposited into the Fund the fees derived from film permits applied for or issued pursuant to § 39-501.04, other funds as may be designated by law, regulation, or reprogramming, and all interest earned on all deposits.

(2) There shall be allocated annually to the Office of Motion Picture and Television Development an amount that is equal to the total deposits and earnings that are estimated to remain unspent in the Fund at the end of the preceding fiscal year plus all deposits and earnings that are estimated to be received during the fiscal year for which the allocation is made.

(3) The funds in the Fund shall be used solely to pay for operating expenses of the Office of Motion Picture and Television Development; provided, that no funds in the Fund shall be used for personnel or personnel-related expenses.

(Mar. 14, 2007, D.C. Law 16-290, § 2e, as added Mar. 3, 2010, D.C. Law 18-111, § 2071(b), 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, § 9029, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21 rewrote subsec. (a), which had read as follows: “(a) There is established as a nonlapsing fund the Film DC Special Account Fund (‘Fund’), which shall be used solely for the purposes set forth in subsection (b)(3) of this section. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b)(3) of this section without regard to fiscal year limitation, subject to authorization by Congress.”

Emergency legislation. — For temporary (90 day) addition, see § 2071(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2071(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 39-105.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 39-105.

§ 39-502. Rulemaking.

The Mayor may promulgate rules necessary to implement this chapter.

(Mar. 14, 2007, D.C. Law 16-290, § 3, 54 DCR 984.)

Emergency legislation. — For temporary (90 day) addition, see § 3 of Film DC Economic Incentive Emergency Act of 2006 (D.C. Act 16-570, December 19, 2006, 54 DCR 8).

Legislative history of Law 16-290. — For Law 16-290, see notes following § 39-501.

Delegation of Authority. — Delegation of

Authority under the Financial Incentives for Motion Picture and Television Productions Emergency Amendment Act of 2009, effective October 15, 2009 (D.C. Act 18-207; 56 DCR 8277), see Mayor’s Order 2009-213, December 8, 2009 (56 DCR 9350).

DIVISION VII. PROPERTY.

TITLE 40. LIENS.

Chapter

1. Garage Keepers and Liverymen.
2. Hospitals.
3. Mechanics, Materialmen, and Contractors.
4. Storage Liens.

CHAPTER 1. GARAGE KEEPERS AND LIVERYMEN.

Sec.

- 40-101. Liveryman's lien.
40-102. Lien for storage, repairs and supplies
for motor vehicles.

Sec.

- 40-103. Enforcement of lien by sale.
40-104. Application of proceeds of sale.
40-105. Limitation on lien for storage.

§ 40-101. Liveryman's lien.

It shall be lawful for all persons keeping or boarding any animals at livery within the District, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, or board of such animals shall have been paid; provided, however, that before enforcing the lien hereby given notice in writing shall be given to such owner in person or by registered mail at his last-known place of residence of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid.

(June 3, 1952, 66 Stat. 96, ch. 361, § 1.)

Historical Citations — 1973 Ed., § 38-204. 1981 Ed., § 38-201.

§ 40-102. Lien for storage, repairs and supplies for motor vehicles.

(a) All persons storing, repairing, or furnishing supplies of or concerning motor vehicles including trailers shall have a lien for their agreed or reasonable charges for such storage, repairs, and supplies when such charges are incurred by an owner or conditional vendee or chattel mortgagor (including a grantor of deed of trust in lieu of mortgage) of such motor vehicle, and may detain such motor vehicle at any time they may have lawful possession thereof. Such lien shall have priority over every security interest and other lien or right in or to the vehicle except as hereinafter limited with respect to claims for storage. Before enforcing such lien, notice in writing shall be given to the title holder, every secured party and other lien holder shown by the certificate of title or registry of the vehicle, and any other persons known to claimant who have any interest in or lien upon the vehicle. Such notice shall be delivered personally or sent by registered mail to the last-known address of the person to whom given, shall state that a lien is claimed for the charges therein set

forth or thereto attached, and shall demand payment thereof. There shall be incorporated in or attached to said notice a statement of particulars of the charge or charges for which a lien is claimed, to which may be added to a claim for storage of the vehicle from the date of said notice to the date of payment or sale, which amount shall be set forth at a daily or weekly rate which shall not be in excess of charges prevailing at the time for similar storage, and shall not be in excess of \$3 per day or \$21 per week, which additional charge shall in no event cover a period in excess of 90 days.

(b) As used in this section, "security interest" and "secured party" have the same meanings as those given to the terms by §§ 28:1-201 and 28:9-105 (1) (m), respectively.

(June 3, 1952, 66 Stat. 97, ch. 361, § 2; Dec. 30, 1963, 77 Stat. 770, Pub. L. 88-243, § 5.)

Section references. — This section is referred to in §§ 40-103 and 40-105.

Prior Codifications. — 1981 Ed., § 38-202. 1973 Ed., § 38-205.

CASE NOTES

ANALYSIS

Bankruptcy.
Claim for storage.
Common law liens.
Compensation.
Construction with other laws.
Conversion.
In general.
Possession by lienor.
Priority of liens.
Waiver or loss of lien.

Bankruptcy.

Where garage keeper, having a subsisting lien upon bankrupt's automobile, lawfully regained and held possession of automobile before owner was adjudicated a bankrupt, garage keeper had a statutory lien valid against the trustee in bankruptcy, even though it arose and was perfected while the bankrupt was insolvent and within four months of filing of petition in bankruptcy. D.C. Code 1940, § 38-201; Bankr. Act, § 67, sub. 6, 11 U.S.C. § 107, sub. b. *Gordon v. Sullivan*, 188 F.2d 980, 1951 U.S. App. LEXIS 3533 (C.A.D.C. 1951).

Claim for storage.

Provision in automobile lien statute that claim for storage may be added to the statement of particulars means that such claim may cover storage charges for the period after notice of lien is given, for which no exact charge can be stated in advance. D.C. Code 1951, § 38-205. *Hill & Sanders, Inc. v. Keneipp*, 109 A.2d 141, 1954 D.C. App. LEXIS 197 (Cr.App. 1954).

Common law liens.

A common-law lien, in contrast to a statutory lien, arises by implication of law and bestows a

privilege to retain property in possession as security for owner's debt or obligation. *District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

Compensation.

Independent garageman with whom conditional seller stored repossessed automobile had, in absence of proof of principal-agent relationship with seller, a lien for all reasonable charges for storage of automobile whether incurred by conditional buyer or by conditional seller, and had right to detain such automobile until storage charges had been paid. D.C. Code 1961, § 38-205. *Jackson v. Greenfield*, 198 A.2d 916, 1964 D.C. App. LEXIS 216 (App. 1964).

Construction with other laws.

Where Maryland law created lien in favor of Maryland garage keeper for cost of repair work performed on automobile owned by resident of the District of Columbia, owner could not escape garage keeper's priority of possessory right by bringing his car into the District, and neither the District's lien statute nor its public policy militated against giving effect in the District to the Maryland-created lien. Code Md.1957, art. 63, § 41; Md. Code, Commercial Law, §§ 16-101 et seq., 16-204, 16-302; D.C. Code § 38-205. *O'Donnell v. S & R, Inc.*, 369 A.2d 168, 1977 D.C. App. LEXIS 419 (1977).

Conversion.

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to

follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. D.C. Code 1951, §§ 38-203 to 38-209, 38-205. *Bullock v. Young*, 118 A.2d 917, 1955 D.C. App. LEXIS 236 (Cr.App. 1955).

In general.

It is within the power of the Legislature to create a statutory lien in favor of a garage keeper, and provide that the lien may run against a conditional vendee and have priority over a conditional bill of sale. *Barrett v. Commercial Credit Co.*, 296 F. 996, 1924 U.S. App. LEXIS 3453 (1924).

Where automobile owner contracted with garage keeper for small repair job and, despite repeated promises to call for automobile, left it with garage keeper who was required to provide valuable space for its storage, a quasi contract or promise implied in law to pay for such storage was created and that obligation was recognizable under automobile lien statute. D.C. Code 1951, § 38-205. *Hill & Sanders, Inc. v. Keneipp*, 109 A.2d 141, 1954 D.C. App. LEXIS 197 (Cr.App. 1954).

Possession by lienor.

Where garage keeper performed repairs upon an automobile, and turned over automobile to its owner, but garage keeper subsequently resumed possession of automobile, garage keeper had a lien on automobile by operation of law and did not lose it by failing to give statutory notice. D.C. Code 1940, § 38-201. *Gordon v. Sullivan*, 188 F.2d 980, 1951 U.S. App. LEXIS 3533 (C.A.D.C. 1951).

Where garage keeper made repairs upon an automobile and turned it over to the owner, and garage keeper subsequently repossessed the automobile from a third party by paying storage charges on automobile, garage keeper's taking and retention of automobile were lawful and he was entitled to retain possession as

against the owner's trustee in bankruptcy. D.C. Code 1940, § 38-201; *Bankr. Act*, § 67, sub. b, 11 U.S.C. § 107, sub. b. *Gordon v. Sullivan*, 188 F.2d 980, 1951 U.S. App. LEXIS 3533 (C.A.D.C. 1951).

Possession is essential to the enforcement of a garage keeper's lien created in the District of Columbia, but not to the retention of the right, and peaceful repossession is recognized as lawful course of action in pursuance of the possessory interest. D.C. Code §§ 28:9-503, 38-205. *O'Donnell v. S & R, Inc.*, 369 A.2d 168, 1977 D.C. App. LEXIS 419 (1977).

Priority of liens.

A prior lien gives a prior legal right, except where statute varies common-law rule. *District of Columbia v. Franklin Inv. Co.*, 404 A.2d 536, 1979 D.C. App. LEXIS 423 (1979).

Waiver or loss of lien.

Garage keeper's lien is not lost by releasing automobile, but may be enforced thereafter if garage keeper should again obtain lawful possession. D.C. Code 1961, § 38-205. *Flanzbaum v. Gordon*, 194 A.2d 125, 1963 D.C. App. LEXIS 294 (App. 1963).

After electrician, who had received possession of automobile from plaintiff who had repaired transmission, had delivered possession to owner, plaintiff's garage keeper's lien was in state of suspended animation and was not extinguished. D.C. Code 1961, § 38-205. *Flanzbaum v. Gordon*, 194 A.2d 125, 1963 D.C. App. LEXIS 294 (App. 1963).

Garage owner, who did not give notice of lien against automobile until he had stored automobile for six months after repairing it, did not lose his lien or his right to claim storage thereby even though automobile lien statute allowed such notice after 30 days. D.C. Code 1951, § 38-205. *Hill & Sanders, Inc. v. Keneipp*, 109 A.2d 141, 1954 D.C. App. LEXIS 197 (Cr.App. 1954).

§ 40-103. Enforcement of lien by sale.

(a) If the amount due and for which a lien is given by § 40-101 or 40-102 hereof is not paid by the end of 30 days after the giving of notice, then the party entitled to such lien may proceed to sell the property so subject to lien at public auction, after giving notice once a week for 3 successive weeks in some daily newspaper published in the District. Said advertisement shall set forth the date, time, and place of sale, which shall not be less than 15 days from date of the 1st publication of such notice, that the purpose of the sale is to satisfy a lien, the amount for which said lien is claimed, including storage to date of sale if allowable, the names of all interested parties, and a description of the chattel, including, in the case of vehicles, the make, type, year and model number, serial number and engine number, if any, and State or District license number and year.

(b) Any person selling such property in order to satisfy a fraudulent,

excessive, or unreasonable lien shall be guilty of a conversion of such property and liable to the owner in damages therefor.

(June 3, 1952, 66 Stat. 97, ch. 361, § 3.)

Prior Codifications. — 1981 Ed., § 38-203. 1973 Ed., § 38-206.

CASE NOTES

ANALYSIS

Conversion.
Notice.

Conversion.

Where garage owner after repairing conditional vendee's automobile turned the same over to the holder of conditional sales contract with permission of conditional vendee's son and collected his repair charges from holder, garage owner was not guilty of conversion in failing to follow the statutory requirements as to notice by repairers of automobile before enforcing lien for charges. D.C. Code 1951, §§ 38-203 to 38-209, 38-205. *Bullock v. Young*, 118 A.2d 917, 1955 D.C. App. LEXIS 236 (Cr.App. 1955).

Notice.

The provisions of Code, § 1262, as amended

41 Stat. 568 (D.C. Code 1929, T. 13, § 4), giving garage keepers a lien for storage and repair charges incurred by owner or conditional vendee, relating to notice, refer either to owner of car or to conditional vendee. *Barrett v. Commercial Credit Co.*, 296 F. 996, 1924 U.S. App. LEXIS 3453 (1924).

Where a garage keeper, under Code, § 1262, as amended 41 Stat. 568 (D.C. Code 1929, T. 13, § 4), giving garage keepers a lien for storage and repair charges incurred by owner or conditional vendee, is seeking to repossess a car taken under a writ of replevin, and not to enforce his lien, it is not necessary to give the notice provided for by that section. *Barrett v. Commercial Credit Co.*, 296 F. 996, 1924 U.S. App. LEXIS 3453 (1924).

§ 40-104. Application of proceeds of sale.

The proceeds of such sale shall be applied:

- (1) To the expenses of such sales and the discharge of such lien;
- (2) To payment of other liens, if any, in the order of their priority; and
- (3) To the owner of the property.

(June 3, 1952, 66 Stat. 97, ch. 361, § 4.)

Prior Codifications. — 1981 Ed., § 38-204. 1973 Ed., § 38-207.

§ 40-105. Limitation on lien for storage.

To the extent that any lien provided for in this chapter is based on a claim for storage of a motor vehicle in excess of \$150, such lien shall be, as to such excess, inferior to the lien of a conditional vendor or chattel mortgagee (as defined in § 40-102) claiming under an instrument recorded on a date earlier than the period to which such charges are attributable.

(June 3, 1952, 66 Stat. 97, ch. 361, § 5.)

Prior Codifications. — 1981 Ed., § 38-205. 1973 Ed., § 38-208.

CASE NOTES

ANALYSIS

Compensation.
In general.

Compensation.

Independent garageman with whom conditional seller stored repossessed automobile had, in absence of proof of principal-agent relationship with seller, a lien for all reasonable charges for storage of automobile whether incurred by conditional buyer or by conditional seller, and had right to detain such automobile until storage charges had been paid. D.C. Code

1961, § 38-205. *Jackson v. Greenfield*, 198 A.2d 916, 1964 D.C. App. LEXIS 216 (App. 1964).

In general.

Where automobile owner contracted with garage keeper for small repair job and, despite repeated promises to call for automobile, left it with garage keeper who was required to provide valuable space for its storage, a quasi contract or promise implied in law to pay for such storage was created and that obligation was recognizable under automobile lien statute. D.C. Code 1951, § 38-205. *Hill & Sanders, Inc. v. Keneipp*, 109 A.2d 141, 1954 D.C. App. LEXIS 197 (Cr.App. 1954).

CHAPTER 2. HOSPITALS.

Sec.

40-201. Hospital's lien for services on recovery in accident cases.

40-202. Notice.

40-203. Liability for failure to pay hospital's lien.

Sec.

40-204. Permission to examine hospital records.

40-205. Recorder to provide lien docket.

§ 40-201. Hospital's lien for services on recovery in accident cases.

Every association, corporation, or other institution, and any agency of the United States or the District of Columbia, maintaining a hospital in the District of Columbia, which shall furnish medical or other service to any patient injured by reason of an accident causing injuries not covered by the Employees' Compensation Act or the Workmen's Compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient, of any recovery or sum had or collected or to be collected by such patient, or by his heirs or personal representatives in the case of his death, whether by judgment or by settlement or compromise to the amount of the reasonable and necessary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages; provided, that the lien herein set forth shall not be applied or considered valid against anyone suffering injuries coming under the Employees' Compensation Act or the Workmen's Compensation Act in this District.

(June 30, 1939, 53 Stat. 990, ch. 255, § 1; June 19, 1948, 62 Stat. 496, ch. 525, § 1.)

Prior Codifications. — 1981 Ed., § 38-301.
1973 Ed., § 38-301.

References in text. — The Employees' Compensation Act, referred to in this section, refers to the Act of September 7, 1916 which is codified in 5 U.S.C. § 8101 et seq.

The Workmen's Compensation Act refers to former Chapter 5 of Title 36, which was repealed by the Act of July 1, 1980, D.C. Law 3-77, § 46.

§ 40-202. Notice.

No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the Office of the Recorder of Deeds of the District of Columbia in a docket provided for such liens, prior to the payment of any moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the payment of any

moneys to such injured person, his attorneys, or legal representatives as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm, or corporation against such liability, where the name of such insurance carrier is ascertained.

(June 30, 1939, 53 Stat. 990, ch. 255, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 16.)

Prior Codifications. — 1981 Ed., § 38-302. 1973 Ed., § 38-302.

CASE NOTES

Avoidance.

Assuming, arguendo, that defendant hospital's lien on any recovery by debtor in damages suit she filed following an automobile accident was a statutory lien, it did not fit any avenue for avoidance under provisions applicable to liens which first became effective at time debtor experienced certain forms of financial distress, liens not perfected or enforceable against a bona fide purchaser on the date petition was

filed, or liens for rent or of distress for rent, in that hospital's lien did not become effective as a result of any of the enumerated instances, lien was enforceable under filing requirements of the District of Columbia Code long before debtor filed for petition, and lien was unrelated to rent or distress for rent. Bankr.Code, 11 U.S.C. §§ 545, 545(1-4), (1)(A-F); D.C. Code 1981, § 38-302. In re Janssen, 42 B.R. 294, 1984 Bankr. LEXIS 5021 (1984).

§ 40-203. Liability for failure to pay hospital's lien.

Any person or persons, firm or firms, corporation or corporations, including an insurance carrier, making any payment to such patient or to his attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement after paying the amount of any prior liens, shall for a period of 1 year from the date of payment to such patient or his heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; and any such association, corporation, or other institution, and any agency of the United States or the District of Columbia, maintaining such hospital, may, within such period, enforce its lien by a suit at law against such person or persons, firm or firms, corporation or corporations making any such payment.

(June 30, 1939, 53 Stat. 990, ch. 255, § 3; June 19, 1948, 62 Stat. 496, ch. 525, § 2.)

Prior Codifications. — 1981 Ed., § 38-303. 1973 Ed., § 38-303.

§ 40-204. Permission to examine hospital records.

Any person or persons, firm or firms, corporation or corporations legally liable for such lien or against whom a claim shall be asserted for compensation for such injuries, shall be permitted to examine the ledger entries and similar records of any such association, corporation, or other institution or body, and of

any agency of the United States or the District of Columbia, maintaining such hospital for the purpose of ascertaining the basis for such lien.

(June 30, 1939, 53 Stat. 991, ch. 255, § 4; June 19, 1948, 62 Stat. 496, ch. 525, § 3.)

Prior Codifications. — 1981 Ed., § 38-304. 1973 Ed., § 38-304.

§ 40-205. Recorder to provide lien docket.

The Recorder of Deeds of the District of Columbia shall provide a suitable bound book to be called the hospital lien docket, in which, upon the filing of any lien claim under the provisions of this chapter, he shall enter the name of the injured person, the name of the person, firm, or corporation alleged to be liable for the injuries, the date of the accident, and the name of the hospital or other institution or agency making the claim. The Recorder of Deeds shall index the same in the name of the injured person and shall charge and collect a fee of \$1 for recording, indexing, and releasing the lien so filed.

(June 30, 1939, 53 Stat. 991, ch. 255, § 5; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); June 19, 1948, 62 Stat. 496, ch. 525, § 4; May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 16.)

Prior Codifications. — 1981 Ed., § 38-305. 1973 Ed., § 38-305.

CHAPTER 3. MECHANICS, MATERIALMEN, AND CONTRACTORS.

Subchapter I. General

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40-305.01. Wharves and lots.

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40-307.01. Artisan's lien — Generally.

40-307.02. Enforcement by sale.

40-307.03. Enforcement by bill in equity.

Subchapter I. General.

§ 40-301.01. Mechanic's lien.

Every building erected, improved, added to, or repaired at the direction of the owner, or the owner's authorized agent, and the land on which the same is erected, intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of the owner, shall be subject to a lien in favor of the contractor who contracted with the owner, in the amount of the contract price or, in the absence of an express contract, the reasonable value of the project; provided, that to enforce the lien, the contractor claiming the lien shall record in the land records a notice of intent and comply with the other procedures prescribed in this chapter.

(Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1237; Oct. 20, 2005, D.C. Law 16-31, § 2(b), 52 DCR 7195.)

Cross references. — Condominiums, see § 40-1902.02.

Horizontal property regimes, see § 42-2025.

Payment as defense to assertion of lien, see § 47-2883.03.

Prior Codifications. — 1981 Ed., § 38-101. 1973 Ed., § 38-101.

Effect of amendments. — D.C. Law 16-31 rewrote section, which had read as follows: "Every building erected, improved, added to, or repaired by the owner or his agent, and the lot of ground on which the same is erected, being all the ground used or intended to be used in connection therewith, or necessary to the use

and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of such owner, whether owner in fee or of a less estate, or lessee for a term of years, or vendee in possession under a contract of sale, shall be subject to a lien in favor of the contractor with such owner or his duly authorized agent for the contract price agreed upon between them, or, in the absence of an express contract, for the reasonable value of the work and materials furnished for and about the erection, construction, improvement, or repair of or addition to such building, or the placing of any engine, machinery, or other thing therein or in connec-

tion therewith so as to become a fixture, though capable of being detached; provided, that the person claiming the lien shall file the notice herein prescribed."

Legislative history of Law 16-31. — For Law 16-31, see notes following § 40-301.03.

CASE NOTES

ANALYSIS

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Agency relationships.

In a lease of premises which were to be improved by the lessee, a covenant that the improvements at the expiration of the term would belong to lessor does not make the lessee an agent within the Mechanic's Lien Law (23 Stat. 64), entitled to charge the property for the labor and materials used in the improvements. *Lipscomb v. Hough*, 286 F. 775, 1923 U.S. App. LEXIS 2755 (1923).

Where the recorded lease, authorizing the lessee to make certain improvements on the premises, which were to become the property of the lessor, expressly provided it should not be construed to confer on the lessee any authority, express or implied, to impose or permit to be imposed any mechanic's lien or other charge on the property, the lessee was not the agent of the lessor within Mechanic's Lien Act July 2, 1884 (23 Stat. 64), authorizing the lien only where the work is done at the instance of the owner or his agent. *Lipscomb v. Hough*, 286 F. 775, 1923 U.S. App. LEXIS 2755 (1923).

A builder, contracting with the lessee of premises to furnish labor and material thereon, with notice that he is dealing with the lessee, and not the owner, is estopped to assert ignorance of the terms of the lease, which was a matter of public record. *Lipscomb v. Hough*, 286 F. 775, 1923 U.S. App. LEXIS 2755 (1923).

Under 23 Stat. 64, c. 143, §§ 1, 4, giving a mechanic's lien to any contractor, subcontractor, materialman, journeyman, and laborer for work and materials furnished for the erection or repair of a building, and providing that when a building shall be erected or repaired by a lessee or tenant for life or years, or a person having an interest in such building or land on which it stands, the lien created shall only extend to and recover the interest of such lessee, tenant, or equitable owner, a provision in a lease giving the lessee the right to make improvements in a leased building, and providing that if made, their cost, not to exceed a certain sum, shall be deducted from the rent, does not convert the lease into a building contract so as to make the lessee the agent of the lessor, and property liable for work and labor furnished the lessee, although the value of the property may be materially enhanced by the improvements put on the property by such lessee. *Langley v. D'Audigne*, 31 App.D.C. 409, 1908 U.S. App. LEXIS 5637 (1908).

A covenant in a lease for the erection by the lessee of a building on the leased premises, to become the property of the lessor at the end of the term, without charge to the lessor, her heirs, or assigns, does not create the relation of principal and agent, between the lessor and lessee, so as to bind the lessor and her property for the contracts of the lessee made in the performance of the covenant; and under such circumstances a bill in equity to enforce a mechanic's lien against the leased property for work and labor done for the lessee in the erection of the building is maintainable only against the leasehold interest. *Albaugh v. Litho-Marble Decorating Co.*, 14 App.D.C. 113, 1899 U.S. App. LEXIS 3548 (1899).

The existence of an agency relationship for purposes of rental or management does not necessarily imply the existence of any agency relationship regarding improvements or repairs as to which a mechanic's lien may be filed. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

Amount of lien.

Supplier lienor had right to enforce its lien up to amount owner paid contractor after notice of

supplier's lien, notwithstanding degree to which owner may have discharged obligation running to contractor under the contract. D.C. Code 1961, §§ 38-101 to 38-126. *Ritzenberg v. Noland Co.*, 364 F.2d 667, 1966 U.S. App. LEXIS 6003 (C.A.D.C. 1966).

Where the amount an owner owed a contractor was rendered uncertain by the owner's claim that a substantial allowance should be made for inferior work and mechanic's lien proceedings instituted by subcontractors, held, that interest on the balance due from the owner to the contractor was properly disallowed. *Woodward & Lothrop v. Union Trust Co. of Rochester, N.Y.*, 262 F. 627, 1920 U.S. App. LEXIS 1577 (1920).

At a minimum, where neither existence of valid contract nor performance thereunder is disputed, contract price is prima facie proof of reasonable value of contractor's services and, therefore, the amount recoverable in suit to enforce mechanic's lien. D.C. Code § 38-101. *Sloane v. Malcolm Price, Inc.*, 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

There having been a bona fide attempt to perform, but a partial failure, a mechanic's lien may be enforced for the agreed price, less the amount required to put the work in the condition promised. *Beha v. Ottenberg*, 17 D.C. 348 (D.C.Supp. 1888).

Attachment of lien.

Mechanic's lien for labor and material furnished under contract for heating and plumbing systems held to attach at commencement of work (D.C. Code 1929, T. 25, § 359). *Deland v. Wagner*, 64 F.2d 552, 1933 U.S. App. LEXIS 4152 (1933).

The lien which a builder in Washington, D.C., has under Act Md.1791, c. 45, § 10, commences with the recording of the contract for building. *Homans v. Coombe*, 12 F.Cas. 444, 1828 U.S. App. LEXIS 349 (1828).

Although mechanic's lien may be founded on contract, right to lien arises immediately when labor is performed or materials are furnished, or both, as consequence of which value is added to structure involved and, only if it is claimed in defense that the labor or materials were not in fact provided or were defective, may the obligor attempt to defeat a mechanic's lien. D.C. Code § 38-101. *Sloane v. Malcolm Price, Inc.*, 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

Under the act of February 2, 1859 (11 Stat. 376), regulating mechanics' liens in the District of Columbia, the contractor may file his notice of intention to claim a lien at any time after the commencement, and within three months after the completion, of the work under his control; but his lien begins only from the time of filing his notice. The fact that he is openly doing the work is not notice to any one, for it is not made

so by the statute. *Cotton v. Holden*, 8 D.C. 463 (D.C.Supp. 1874).

Construction and application.

Statute must be strictly construed in determining whether right to lien exists (Code, § 1237 [D.C. Code 1929, T. 25, § 351]). *Deming v. Wardman Const. Co.*, 39 F.2d 504, 1930 U.S. App. LEXIS 4099 (1930).

Statute should be liberally construed in favor of claimant, where right to lien is clear (Code, § 1237 [D.C. Code 1929, T. 25, § 351]). *Deming v. Wardman Const. Co.*, 39 F.2d 504, 1930 U.S. App. LEXIS 4099 (1930).

While a statute creating a mechanic's lien is to be reasonably construed so as to effectuate, if possible, the legislative intent, those who would claim its protection cannot be excused from performing precedent conditions. *James B. Lambie Co. v. Bigelow*, 34 App.D.C. 49, 1909 U.S. App. LEXIS 5996 (1909).

Mechanics' lien laws, creating liabilities that did not before exist, are reasonably construed when they are limited to such persons and purposes as come directly or by necessary implication within their granting words. U.S., to Use of Standard Oil Co., v. City Trust, Safe Deposit & Security Co., 21 App.D.C. 369, 1903 U.S. App. LEXIS 5488 (1903).

Mechanic's lien statutes being remedial in their nature should be liberally construed. U.S., to Use of Standard Oil Co., v. City Trust, Safe Deposit & Security Co., 21 App.D.C. 369, 1903 U.S. App. LEXIS 5488 (1903).

Courts may not excuse those who claim the mechanic's lien statute's protection from the performance of precedent conditions. *McNair Builders, Inc. v. 1629 16th St., L.L.C.*, 968 A.2d 505, 2009 D.C. App. LEXIS 60 (2009).

The mechanic's lien statute can be construed to permit a real estate management agent to have the status of a contractor if he furnishes labor and materials for the improvement of the property. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

Once mechanic's lien arises, mechanic's lien statute operates to prescribe amount thereof and if lien arises from work performed pursuant to valid contract, there is no dispute over fact that labor and materials have been expended on and to benefit of building in accordance with contract and no expenditure is challenged as unreasonable, contract price is measure of liability upon enforcement of the lien and no further proof of expenditures or proffer of reasonableness is required to make lien enforceable. D.C. Code § 38-101. *Sloane v. Malcolm Price, Inc.*, 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

Where a lien is claimed upon the property of a person who made no contract with the plaintiff, the claimant will be held strictly to the

terms of the statute, and must clearly establish his lien. *Martin v. Campbell*, 17 D.C. 296 (D.C.Sup. 1888).

Contractors.

Acts Cong.1833, c. 80, 4 Stat. 659, "to secure to mechanics and others payment for labor done and materials furnished, in the erection of buildings in the District of Columbia," does not give a lien to a master builder or contractor, who undertakes by contract with the owner to erect a building, or some part thereof, on certain terms. *Winder v. Caldwell*, 55 U.S. 434, 1852 U.S. LEXIS 456 (U.S.Dist.Col. 1852).

Since attorneys and client expressly provided for creation of lien on property recovered to secure payment of attorney fees, lien was enforceable in accordance with its terms regardless of any personal liability of client for payment of such fees. *Wolf v. Sherman*, 682 A.2d 194, 1996 D.C. App. LEXIS 178 (1996).

Status as a real estate broker or property manager does not of itself entitle one to assert a mechanic's lien against an owner's property, but that is not to say that one who has that status regarding certain property cannot at the same time make repairs or improvements to that property as a "contractor" within the meaning of the mechanic's lien statute. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

A person who agrees to act as manager and broker with respect to residential real property owned by another and at the same time, by furnishing labor and materials for its improvement and repair, acquires the status of a "contractor" is entitled to assert a statutory mechanic's lien upon the real property in question. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

Contractor who performed work in improvement of house would be allowed to recover reasonable cost under contract law. *Sloane v. Malcolm Price, Inc.*, 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

Contracts.

The words "any contract" as used in the Congressional act providing that any person who shall hereafter, by virtue of "any contract" with the owner of any building or with the agent of such owner, perform any labor, or furnish any materials, engines, or machinery for the construction or repair of such building, shall, on filing the notice prescribed in the act, have a lien on the building and realty for labor done, or materials, engines, or machines furnished, when the amount shall exceed \$20, includes special contracts as well as contracts which arise by implication, unless the materialman is secured by a trust deed or mortgage or some other form of security repugnant to the theory that he ever intended to hold a lien

under mechanics' lien law. 11 Stat. 376. *McMurray v. Brown*, 91 U.S. 257, 1875 U.S. LEXIS 1358 (U.S.Dist.Col. 1875).

Since a contract to renovate, remodel or repair a house imports that work will be done by mechanics and artisans and that materials will be furnished in connection with that work, implicit in contract is a provision that a lien will attach to secure payment for work and materials, and statutory provisions for mechanic's and materialmen's liens must be taken as a part of contract. Truth in Lending Act, §§ 102 et seq., 125(a), 15 U.S.C. §§ 1601 et seq., 1635(a). *Gardner & North Roofing & Siding Corp. v. Board of Governors*, 464 F.2d 838, 1972 U.S. App. LEXIS 8421 (C.A.D.C. 1972).

Within statute providing that once work on building is performed pursuant to contract, that structure becomes subject to lien "for the contract price agreed upon"; "contract" is not limited to certain type of contract and includes cost-plus type contract. D.C. Code § 38-101. *Sloane v. Malcolm Price, Inc.*, 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

Creation of lien.

Liens may arise by statute, by express agreement of parties, or by operation of common law. *Wolf v. Sherman*, 682 A.2d 194, 1996 D.C. App. LEXIS 178 (1996).

Defenses, generally.

Where the owner of a building accepts the same after it is finished, with knowledge of deviations from the specifications, without objecting at the time, he cannot set up such deviations as a defense in an action to enforce a mechanic's lien for the work. *Haller v. Clark*, 21 D.C. 128, 1892 U.S. App. LEXIS 2137 (D.C.Sup. 1892).

Engine, machinery, or other thing.

Under Act Cong. 1884, c. 143, giving a mechanic's lien "for any engine, machinery, or other thing" placed in a building, an electric elevator is subject to a lien. *Lefler v. Forsberg*, 1 App.D.C. 36, 1893 U.S. App. LEXIS 3008 (1893).

Equitable liens.

Equity may impose lien to effectuate some underlying agreement between debtor and creditor or in other circumstances where justice requires. *Wolf v. Sherman*, 682 A.2d 194, 1996 D.C. App. LEXIS 178 (1996).

Equitable liens, like other forms of equitable relief, are generally premised upon unavailability of other adequate remedy. *Wolf v. Sherman*, 682 A.2d 194, 1996 D.C. App. LEXIS 178 (1996).

In general.

Mechanic's lien undertaking, when approved by court, becomes a substitute for interest in

the premises which was subject to a lien. D.C. Code 1961, §§ 38-101, 38-102, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Statute on liens of mechanics or artisans restates common-law lien and provides a means of enforcing it. D.C. Code 1961, §§ 38-124, 38-126. *Villacres v. Haddad*, 184 A.2d 634, 1962 D.C. App. LEXIS 332 (Cr.App. 1962).

Interests subject to lien, generally.

Code, § 1237 (D.C. Code 1929, T. 25, § 351), expanding the Mechanic's Lien Act to cover repairs or improvements made on the order of a lessee for a term of years, but providing that the lien for work on the order of the lessee shall extend only to his interest in the premises, does not materially change the former law. *Lipscomb v. Hough*, 286 F. 775, 1923 U.S. App. LEXIS 2755 (1923).

Where a guardian, with her wards' money, wrongfully purchases realty, which is conveyed to her in trust for such wards, and such guardian has an interest in the property by reason of contributions of her own money towards the erection of improvements on the premises, such interest may be subjected to the claim of the materialman; but his bill to enforce his lien must charge, and his proof show, what that interest is, and that it is sufficient to discharge the lien over and above the amount of the funds of the wards invested in the property, with interest. *Alfred Richards Brick Co. v. Atkinson*, 16 App.D.C. 462, 1900 U.S. App. LEXIS 5311 (1900).

Where a guardian, with her wards' money, wrongfully purchases real estate, which by a deed duly recorded is conveyed to her in trust for her wards, with power to sell, convey, and incumber in her discretion, a materialman furnishing material in the erection of improvements on the real estate is chargeable with notice of the trust; and his right to a mechanic's lien is inferior to the right of the wards to follow their money thus wrongfully invested. *Alfred Richards Brick Co. v. Atkinson*, 16 App.D.C. 462, 1900 U.S. App. LEXIS 5311 (1900).

A mechanic's lien for materials furnished on a contract with a partnership will bind the land, though the title is in one only of the partners. *Smith v. Johnson*, 9 D.C. 481 (D.C.Supp. 1876).

Judgment.

Judgment which establishes a right to lien upon interest subject to lien is judgment which is secured by mechanic's lien undertaking. D.C. Code 1961, §§ 38-101, 38-102, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Personal judgment obtained by contractor against purported owner, which expressly reserved a ruling with respect to validity of mechanic's lien, could not serve as basis of judgment against surety under its mechanic's lien undertaking in view of failure to show purported owner's interest in property in question. D.C. Code 1961, §§ 38-101, 38-102, 38-110, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Licensing.

Subcontractor was not entitled to a mechanic's lien since its underlying contract to provide plumbing services to general contractor was illegal, in that subcontractor, which excavated and laid pipes for purpose of connecting building to public water main and connected each unit to public main, did not hold a master plumber's license as required by statute which provides that it is "unlawful for any person to engage in the work of plumbing or gas fitting in the District of Columbia unless he is licensed or is an employee of a licensed master plumber." D.C. Code §§ 2-1405, 2-1406, 38-101. *Highpoint Townhouses, Inc. v. Rapp*, 423 A.2d 932, 1980 D.C. App. LEXIS 413 (1980).

Presumptions and burden of proof.

In suit to enforce mechanic's lien, plaintiff contractor did not have burden of proving reasonableness of costs and court was not required to determine reasonableness, in absence of any claim that the work had not been done or materials not furnished. D.C. Code § 38-101. *Sloane v. Malcolm Price, Inc.*, 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

Priority of liens.

A mechanic's lien priority over a construction loan secured by a deed of trust recorded prior to commencement of work is granted by District of Columbia only with respect to advances made after mechanic files a notice of intention to assert a lien. D.C. Code § 38-109. *Electrical Equipment Co. v. Security Nat'l Bank*, 606 F.2d 1357, 1979 U.S. App. LEXIS 12140 (C.A.D.C. 1979).

Affording a mechanic's lien priority over interest on prefilings advances, whether accruing before or after filing, does violence to both letter and policy of governing District of Columbia statute. D.C. Code § 38-109. *Electrical Equipment Co. v. Security Nat'l Bank*, 606 F.2d 1357, 1979 U.S. App. LEXIS 12140 (C.A.D.C. 1979).

Claim made by bank to payment of loan to developers from foreclosure proceeds of interest accruing after contractor filed its notice of mechanic's lien on loan advances predating filing did not take precedence over contractor's lien under law of District of Columbia where automatically accruing interest was not "advanced"

in any accepted sense of word because priority was limited by statute to "advance" and statute also placed emphasis on public recordation as basis for setting priorities among construction lenders and mechanics. D.C. Code § 38-109. Electrical Equipment Co. v. Security Nat'l Bank, 606 F.2d 1357, 1979 U.S. App. LEXIS 12140 (C.A.D.C. 1979).

Subcontractor who filed mechanic's lien for value of certain equipment he installed recognized that property owner's right to immediate possession of such equipment was superior to his own. D.C. Code 1961, § 38-101. National Brick & Supply Co. v. Baylor, 299 F.2d 454, 1962 U.S. App. LEXIS 6037 (C.A.D.C. 1962).

Creditor with valid lien generally has claim upon property superior to unsecured creditors and to junior lienholders upon same property, but subordinate to like interests of prior lienholders. Wolf v. Sherman, 682 A.2d 194, 1996 D.C. App. LEXIS 178 (1996).

Trial court presiding over dispute between debtor's law firm and another creditor, both of whom claimed lien on debtor's escrowed funds, was not required to determine reasonableness of attorney fee arrangement between debtor and firm. Wolf v. Sherman, 682 A.2d 194, 1996 D.C. App. LEXIS 178 (1996).

Public policy.

Enforcement of claim of heating contractor for amount due on contract with owners to complete work begun by contractor under sub-contract with defaulting building corporation did not contravene public policy reflected in mechanics' lien law on theory that heating contractor would receive preferential treatment over building corporation's other subcontractors. D.C. Code 1961, § 38-101 et seq. Baylor v. Bortolussi, 194 A.2d 653, 1963 D.C. App. LEXIS 302 (App. 1963).

Purpose.

Purpose and effect of statute are not to expose owner to liability to lienors greater than that owed to contractor. D.C. Code 1961, §§ 38-101 to 38-126. Ritzenberg v. Noland Co., 364 F.2d 667, 1966 U.S. App. LEXIS 6003 (C.A.D.C. 1966).

Purpose of the mechanic's lien statute is to provide a remedy to parties who have enhanced the value of property through contributions of labor and materials. D.C. Code 1981, § 38-101. Moore v. Axelrod, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

Questions of law and fact.

For purposes of determining the beginning of three-month period provided for filing mechanic's lien, the date of abandonment of contract is question of fact dependent on more than mere cessation of work. D.C. Code § 38-101. Sloane

v. Malcolm Price, Inc., 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

Removal of lien.

Where statute prescribed a specific method for removal of mechanic's liens from records by paying into court amount claimed plus interest and costs or by filing a bond, a direct action to remove the lien could not be maintained, notwithstanding plaintiff's contention that he was without funds either to pay amounts into court or to secure a bond and that delay incident to ordinary procedure would cause him irreparable damage, particularly where owner admitted that he had deposited sufficient money to cover lien with a title insurance company. D.C. Code 1940, §§ 38-115, 38-118, 38-119. Clarke v. Huff, 165 F.2d 247, 1947 U.S. App. LEXIS 2059 (1947).

Under statute providing that a mechanic's lien may be placed on property not only for work done but also for materials furnished, complaint for removal of lien alleging that contractor did no work on one of 2 lots was insufficient where it failed to allege that no materials were furnished for improvement of such lot. Clarke v. Huff, 165 F.2d 247, 1947 U.S. App. LEXIS 2059 (1947).

Review.

Trial judge's findings as to balance of contract price which remained unexpended after owner had completed work following prime contractor's abandonment of work before completion, and against which subcontractors could enforce their mechanic's liens, were not clearly erroneous, in view of conflicting evidence supporting findings. D.C. Code 1961, § 38-104. National Brick & Supply Co. v. Baylor, 324 F.2d 892, 1963 U.S. App. LEXIS 3740 (C.A.D.C. 1963).

On appeal from judgment to enforce mechanic's lien based on cost-plus contract, record did not show aggregate cost upon face of account to be so excessive and unreasonable as to suggest gross negligence or fraud and did not justify compelling contractor to show reasonableness. D.C. Code § 38-101. Sloane v. Malcolm Price, Inc., 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

Right to lien, generally.

If labor has been performed or materials furnished, no matter in what manner the owner agreed to pay, if he has not paid in any way, the laborer or mechanic has a right to resort to the security provided by law, unless the rights of third persons intervene before he gives the required notice. 11 Stat. 376. McMurray v. Brown, 91 U.S. 257, 1875 U.S. LEXIS 1358 (U.S. Dist. Col. 1875).

One who furnishes materials for the construction of a building, under an agreement with the owner that the latter would convey to him certain real estate, at a stipulated price, in

payment, is entitled to a lien upon the building, on giving the notice required by law, in case the owner refuses to convey the land or pay for the materials furnished. *McMurray v. Brown*, 91 U.S. 257, 1875 U.S. LEXIS 1358 (U.S. Dist. Col. 1875).

A builder took real security for payment of the work which he was to do, and, the work being all done, gave it up and took a mere note. Held, that no builder's lien attached. *Grant v. Strong*, 85 U.S. 623, 1873 U.S. LEXIS 1335 (U.S. Dist. Col. 1873).

Lien did not attach by reason of subsequent acquisition of title by one entering into contract for performance of services (Code, § 1237 (D.C. Code 1929, T. 25, § 351)). *Deming v. Wardman Const. Co.*, 39 F.2d 504, 1930 U.S. App. LEXIS 4099 (1930).

A materialman who, having refused a building contractor credit, furnished materials upon an order of the contractor on the architect to pay for the materials, and to deduct the amount from the contract price, which order was accepted by the architect as agent for the owner, who subsequently approved his act, is entitled to a mechanic's lien. *Libbey v. Harney*, 41 App.D.C. 205, 1913 U.S. App. LEXIS 1998 (1913).

Subcontractors.

Where the landlord agreed to make specified improvements, and his agent and the tenant selected a superintendent of the work who received estimates for the work from separate contractors and materialmen, which were accepted by the landlord's agent and thereafter vouchers were submitted by the superintendent to such agent and paid by him, the superintendent is to be deemed the agent of the landlord, and parties doing the work and furnishing the materials are not subcontractors, but are contractors within the meaning of sections 1237 and 1239, Code of Law 1901 (D.C. Code 1929, T. 25, §§ 351, 353), relating to mechanics' liens. *McLean v. Nolan*, 44 App.D.C. 1, 1915 U.S. App. LEXIS 2662 (1915).

To protect his right to enforce a mechanic's lien, a third party doing work on real property who has reason to believe that the party who arranged for his services may be acting as a contractor rather than as agent of the owner, need only give notice to the owner and, similarly, if he should wish to discover the terms of the contract between the owner and the party who hired him, the subcontractor should make demand of the owner. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

Substantial performance.

In a mechanic's lien proceeding, plaintiff contractor, who intentionally failed to observe portions of the building specifications and repeat-

edly refused to remedy the defects, is not entitled to the benefit of the equitable doctrine of substantial performance. *Turner v. Henning*, 262 F. 637, 1920 U.S. App. LEXIS 1581 (1920).

Sufficiency of evidence.

Evidence sustained finding that abandonment of work under home improvement contract by plaintiff contractor did not occur prior to the beginning of three months period provided for filing of mechanic's lien and that no abandonment occurred prior to termination of mutual efforts to compromise, in proceeding by contractor to enforce mechanic's lien. D.C. Code § 38-101. *Sloane v. Malcolm Price, Inc.*, 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

In suit to enforce mechanic's lien based on cost-plus contract, evidence sustained finding that estimated total cost figure contained in contract was not a maximum. D.C. Code § 38-101. *Sloane v. Malcolm Price, Inc.*, 339 A.2d 43, 1975 D.C. App. LEXIS 394 (1975).

Sufficiency of notice.

Where the interest of the owner of land, upon which it is sought to establish a mechanic's lien, is the only interest against which the lien can run, *quaere*, whether the mention of his name in the caption of the notice of the lien required to be filed is sufficient, under Code D.C. § 1238 (D.C. Code 1929, T. 25, § 352), requiring the notice to specifically set forth, among other things, "the name of the party against whose interest a lien is claimed." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.*, 35 App.D.C. 1, 1910 U.S. App. LEXIS 5859 (1910).

Where a mechanic's lien may run against any one of three distinct existing interests in land, a notice of lien in the caption of which the name of the owner is given, and in the body of which is not given "the name of the party against whose interest a lien is claimed," as required by Code D.C. § 1238 (D.C. Code 1929, T. 25, § 352), but it is thereby merely stated that the amount claimed is due for labor and materials furnished under a contract with a party who is named, the notice of lien is insufficient to create an enforceable lien. *Fidelity Storage Corp. v. Trussed Concrete Steel Co.*, 35 App.D.C. 1, 1910 U.S. App. LEXIS 5859 (1910).

Sureties.

Surety's obligation under mechanic's lien undertaking is confined to purpose of mechanic's lien statute. D.C. Code 1961, §§ 38-101, 38-102, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Mere fact that mechanic's lien undertaking had been offered and filed did not estop surety sued on personal judgment obtained against its insured from denying its insured's ownership of premises in question. D.C. Code 1961, §§ 38-

101, 38-102, 38-110, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Valid liens.

Compliance with statutory requirements is necessary to secure valid enforceable mechanic's lien. *Chamberlin Metal Weather Strip Co. v. Karrick*, 53 F.2d 928, 1931 U.S. App. LEXIS 2782 (1931).

A compliance with statutory requirements relating to mechanics' liens is necessary in order to secure a valid and enforceable lien. *Fidelity Storage Corp. v. Trussed Concrete Steel Co.*, 35 App.D.C. 1, 1910 U.S. App. LEXIS 5859 (1910).

For purposes of dispute in which two creditors both claimed lien on escrowed funds of mutual debtor, "valid lien" meant qualified right of property which creditor had in or over specific property of debtor, as security for debt or charge or for performance of some act. *Wolf v. Sherman*, 682 A.2d 194, 1996 D.C. App. LEXIS 178 (1996).

Waiver of lien.

Contracts of a special character, such as to give a mortgage to a laborer or a mechanic, if duly executed under circumstances showing that the claim to a lien was not intended by the parties, may defeat such a claim, but a mere promise to give such a security if subsequently broken, will not impair such a right if the requisite notice is subsequently given before any right of a third person, as by attachment or conveyance, has become vested in the premises. 11 Stat. 376. *McMurray v. Brown*, 91 U.S. 257, 1875 U.S. LEXIS 1358 (U.S.Dist.Col. 1875).

The question whether a mechanic's lien is obtained or is displaced when it once attaches is largely a matter of intention to be inferred from

the acts of the parties and all the surrounding circumstances. *Grant v. Strong*, 85 U.S. 623, 1873 U.S. LEXIS 1335 (U.S.Dist.Col. 1873).

Written agreement between owner and contractor under which contractor took security for payment of work which contractor agreed to perform and under which contractor gave up the security and took a note, were construable as showing intention on part of the contractor to rely on security for payment of his work other than a mechanic's lien, and as creating no such lien. *Grant v. Strong*, 85 U.S. 623, 1873 U.S. LEXIS 1335 (U.S.Dist.Col. 1873).

Where plasterer subcontractor finished the job and wrote letters to building owner and to supplier of materials stating the balance due on subcontract and a willingness to refrain from filing a mechanic's lien against property if owner and material supplier would acknowledge that they would protect subcontractor and owner and supplier signed requested acknowledgments, there was a meeting of the minds, consideration for such agreement, and breach of agreement imposed on owner and supplier liability for loss flowing from subcontractor's forbearance. D.C. Code §§ 38-101 to 38-103. *Kidwell & Kidwell, Inc. v. W. T. Galliher & Bro., Inc.*, 282 A.2d 575, 1971 D.C. App. LEXIS 216 (1971).

The mere transfer of a promissory note to the material man will not release his lien, unless the note is paid at maturity, or unless it is taken in payment of the account. *Smith v. Johnson*, 9 D.C. 481 (D.C.Sup. 1876).

A mechanic, who has filed a lien upon real estate for work and materials furnished in the erection of houses thereon, and releases it for the purpose of enabling the owner to secure a new loan, cannot afterwards claim to enforce the same lien, as against the party making such loan upon the security of the property. *Smith v. Johnson*, 9 D.C. 481 (D.C.Sup. 1876).

§ 40-301.02. Notice.

(a)(1) A contractor desiring to enforce the lien shall record in the land records a notice of intent that identifies the property subject to the lien and states the amount due or to become due to the contractor. The notice of intent shall be recorded during the construction or within 90 days after the earlier of the completion or termination of the project. If the notice of intent is not recorded in the land records during the construction or within 90 days after the earlier of the completion or termination of the project, the contractor's lien shall terminate upon the expiration of the 90-day period. A notice of intent that does not comply with subsection (b) of this section shall be void.

(2) Any contractor who records timely a notice of intent in accordance with subsection (a)(1) of this section, shall send to the owner, by certified mail to the current address (or if not available in the local public records, the last known address) of the owner, a copy of the notice of intent within 5 business

days after the date of its recordation in the land records. If the certified mail is returned to the contractor unclaimed or undelivered, the contractor shall post a copy of the recorded notice of intent at or on the affected real property in a location generally visible from some entry point to the real property.

(b) The notice of intent shall include the following:

(1) The name and address of the contractor or the contractor's registered agent;

(2) The name and address of the owner or the owner's registered agent;

(3) The name of the party against whose interest a lien is claimed and the amount claimed, less any credit for payments received up to and including the date of the notice of intent;

(4) A description of the work done, including the dates that work was commenced and completed;

(5) A description of the material furnished, including the dates that material was first and last delivered;

(6) A legal description and, to the extent available, a street address of the real property;

(7)(A) To the extent available under applicable law, if the contractor is an entity organized under the laws of the District of Columbia or is doing business in the District of Columbia within the meaning of applicable District law:

(i) A copy of the contractor's current license to do business in the District issued by the Department of Consumer and Regulatory Affairs; and

(ii) A certificate of good standing from the Department of Consumer and Regulatory Affairs issued within 180 days prior to the date of the filing of the notice of intent; or

(B) To the extent available under applicable law, if the contractor is an individual or an entity organized under laws other than those of the District of Columbia, and is not doing business in the District of Columbia within the meaning of applicable District laws but is required to be licensed by a governmental entity:

(i) A copy of the contractor's current license to do business issued by the government of the other jurisdiction; and

(ii) A certificate evidencing the contractor's good standing in its place of business or state of incorporation issued by the other jurisdiction;

(8) If the project is provided under a home improvement contract, a copy of the home improvement contract; and

(9)(A) A sworn, notarized statement affirming under penalty of perjury and upon personal knowledge that:

(i) The contents of the notice of intent are true and correct to the best of the contractor's information and belief; and

(ii) The contractor has a right to recover the amount claimed.

(B) If a notice of intent is executed by an authorized representative or counsel of the contractor, he or she shall attach evidence of his or her authority to execute the notice of intent on behalf the contractor and shall affirm that the notice of intent is true and correct to the best of the affiant's knowledge and belief.

(Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1238; June 25, 1936, 49 Stat. 1921, ch.

804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(a), (b); Mar. 19, 2002, D.C. Law 14-84, § 2(a), 49 DRC 198; Oct. 20, 2005, D.C. Law 16-31, § 2(c), 52 DCR 7195; June 5, 2012, D.C. Law 19-138, § 2(a), 59 DCR)

Section references. — This section is referred to in § 47-2883.03.

Prior Codifications. — 1981 Ed., § 38-102. 1973 Ed., § 38-102.

Effect of amendments. — D.C. Law 14-84 rewrote the section, which had read:

“Any such contractor wishing to avail himself of the provision aforesaid, whether his claim be due or not, shall file in the Office of the Recorder of Deeds of the District of Columbia during the construction or within 3 months after the completion of such building, improvement, repairs, or addition, or the placing therein or in connection therewith of any engine, machinery, or other thing so as to become a fixture, a notice of his intention to hold a lien on the property hereby declared liable to such lien for the amount due or to become due to him, specifically setting forth the amount claimed, the name of the party against whose interest a lien is claimed, and a description of the property to be charged, and the said Recorder of Deeds shall file said notice and record the same in a book to be kept for the purpose.”

D.C. Law 16-31 rewrote the section.

D.C. Law 19-138, in subsec. (a)(1), substituted

“during the construction or within 90 days” for “within 90 days”.

Legislative history of Law 14-84. — Law 14-84, the “Mechanic’s Lien Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-248, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 6, 2001, and December 4, 2001, respectively. Signed by the Mayor on December 20, 2001, it was assigned Act No. 14-204 and transmitted to both Houses of Congress for its review. D.C. Law 14-84 became effective on March 19, 2002.

Legislative history of Law 16-31. — For Law 16-31, see notes following § 40-301.03.

Legislative history of Law 19-138. — Law 19-138, the “Mechanics Lien Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-489, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 27, 2012, it was assigned Act No. 19-335 and transmitted to both Houses of Congress for its review. D.C. Law 19-138 became effective on June 5, 2012.

CASE NOTES

ANALYSIS

Amount claimed.
Commencement of period.
Completion.
Contractor status.
Necessity of compliance.
Questions of law and fact.
Separate lots.
Subsequent work.
Sufficiency of notice, generally.

Amount claimed.

Under the mechanic’s lien law (Rev.St.D.C. § 693; Act July 21, 1884, 23 Stat. 64, § 2), requiring that notices of lien shall “specifically set forth the amount claimed,” it is necessary only to set forth precisely the amount claimed, and not the items that go to make up that amount. *Emack v. Campbell*, 14 App.D.C. 186, 1899 U.S. App. LEXIS 3554 (1899).

Commencement of period.

Contractor’s abandonment of work is deemed “completion” of building for purpose of filing mechanics’ liens (Code, §§ 1238, 1239 [D.C. Code 1929, T. 25, §§ 352, 353]). *Harper v.*

Gallihier & Huguely, 29 F.2d 452, 1928 U.S. App. LEXIS 2707 (1928).

Where a notice of lien must be filed within three months after the completion of the building, such time dates from its substantial completion, and not from the period stoves, gas fixtures, and electric bells were placed in the house. *Brown v. Waring*, 1 App.D.C. 378, 1893 U.S. App. LEXIS 3047 (1893).

When contractor abandons project prior to completion, applicable time period for asserting mechanic’s lien runs from date of abandonment. D.C. Code §§ 38-102, 38-115. *Malcolm Price, Inc. v. Sloane*, 308 A.2d 779, 1973 D.C. App. LEXIS 344 (1973).

Under the act of congress of July 2, 1884, 24 Stat. 64 (mechanics’ liens), a lien for material furnished the original contractor must be filed within three months from the finishing of the work under the contract, and not from the completion of other work done subsequently. *Martin v. Campbell*, 17 D.C. 296 (D.C.Sup. 1888).

Under Rev.St. § 693, requiring a contractor desiring a lien for labor done to file notice thereof “within three months after the comple-

tion of the building," the completion of the building, and not the completion of his work, is the point from which the limitation of the time for filing notice begins to run. *Martin v. Campbell*, 17 D.C. 296 (D.C.Supp. 1888).

Completion.

Contractor's abandonment of work is deemed "completion" of building for purpose of filing mechanics' liens (Code, §§ 1238, 1239 [D.C. Code 1929, T. 25, §§ 352, 353]). *Harper v. Galliher & Hugueley*, 29 F.2d 452, 1928 U.S. App. LEXIS 2707 (1928).

Whether a building was completed or not on a given date within the meaning of the mechanics' lien law so as to affect the rights of lienors will be determined by what the common intelligence and common usage regard as completion, always, however, with reference to the building contract; but no amount of work is too small, the completion of which is required, to prevent the consummation of a fraud. *Riggs Fire Ins. Co. v. Shedd*, 16 App.D.C. 150, 1900 U.S. App. LEXIS 5282 (1900).

A building is not completed, within the mechanic's lien law, so as to affect the rights of liens, where there was a down spout to be placed on the front, iron shelves to be placed in the vaults, a broken plateglass window to be replaced, alterations in the marble work on the front of the building, and gas fixtures to be hung, all of which were required by the contract. *Riggs Fire Ins. Co. v. Shedd*, 16 App.D.C. 150, 1900 U.S. App. LEXIS 5282 (1900).

Contractor status.

A person who agrees to act as manager and broker with respect to residential real property owned by another and at the same time, by furnishing labor and materials for its improvement and repair, acquires the status of a "contractor" is entitled to assert a statutory mechanic's lien upon the real property in question. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

Necessity of compliance.

One failing to file mechanic's lien in time cannot enforce it under statute (Code, §§ 1238, 1239, 1246 [D.C. Code 1929, T. 25, §§ 352, 353, 360]). *Harper v. Galliher & Hugueley*, 29 F.2d 452, 1928 U.S. App. LEXIS 2707 (1928).

A compliance with statutory requirements relating to mechanics' liens is necessary in order to secure a valid and enforceable lien. *Fidelity Storage Corp. v. Trussed Concrete Steel Co.*, 35 App.D.C. 1, 1910 U.S. App. LEXIS 5859 (1910).

Questions of law and fact.

Summary judgment rendered in action to enforce mechanic's lien created issue of fact as to whether contractor abandoned project when statement was not paid or terminated work

some time thereafter when owners' counteroffer was clearly rejected and thus there was issue of fact as to whether notice of mechanic's lien was timely filed. D.C. Code §§ 38-102, 38-115; D.C. Code SCR, Civil Rules 56, 56(e). *Malcolm Price, Inc. v. Sloane*, 308 A.2d 779, 1973 D.C. App. LEXIS 344 (1973).

Separate lots.

A mechanic, pursuant to his contract with the owner of certain lots in the city of Washington, erected a row of buildings upon them. Held, that he did not lose his lien because his notice claimed it upon the property as an entirety, without specifically setting forth the amount claimed upon each building. *Phillips v. Gilbert*, 101 U.S. 721, 1879 U.S. LEXIS 1978 (U.S. Dist. Col. 1879).

Materialmen who furnished material for semidetached dwellings erected on separate lots properly filed against each of lots separate lien notices, each of which was in full amount for balance due, and trustees under deed of trust were not prejudiced by waiver of such liens as to one of lots (D.C. Code 1929, T. 25, § 364). *Roth v. Eisinger Mill & Lumber Co.*, 70 F.2d 294, 1934 U.S. App. LEXIS 4137 (1934).

Subsequent work.

Under the mechanic's lien law of the District of Columbia, no extra work not completed within three months preceding the filing of the claim in the clerk's office is covered by the lien. *Caldwell v. Winder*, 30 F.Cas. 972, 1850 U.S. App. LEXIS 330 (1850).

Sufficiency of notice, generally.

Where a lienor has named as alleged owner one who has no interest in the property or the wrong person, notice of mechanic's lien is fatally insufficient. D.C. Code 1961, § 38-102. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Notice of mechanic's lien, naming as owner person who had then ceased to be owner, held invalid for not stating name of party against whose interest lien was claimed (D.C. Code 1929, T. 25, §§ 351, 352). *Chamberlin Metal Weather Strip Co. v. Karrick*, 53 F.2d 928, 1931 U.S. App. LEXIS 2782 (1931).

Where the interest of the owner of land, upon which it is sought to establish a mechanic's lien, is the only interest against which the lien can run, quare, whether the mention of his name in the caption of the notice of the lien required to be filed is sufficient, under Code D.C. § 1238 (D.C. Code 1929, T. 25, § 352), requiring the notice to specifically set forth, among other things, "the name of the party against whose interest a lien is claimed." *Fidelity Storage Corp. v. Trussed Concrete Steel Co.*, 35 App.D.C. 1, 1910 U.S. App. LEXIS 5859 (1910).

Where a mechanic's lien may run against any one of three distinct existing interests in land, a notice of lien in the caption of which the name of the owner is given, and in the body of which is not given "the name of the party against whose interest a lien is claimed," as required by Code D.C. § 1238 (D.C. Code 1929, T. 25, § 352), but it is thereby merely stated that the amount claimed is due for labor and materials furnished under a contract with a party who is named, the notice of lien is insufficient to create an enforceable lien. *Fidelity Storage Corp. v. Trussed Concrete Steel Co.*, 35 App.D.C. 1, 1910 U.S. App. LEXIS 5859 (1910).

Under the mechanic's lien law of this District (Rev.St.D.C. § 693; Act July 2, 1884, 23 Stat. 64, § 2), requiring the notice to be filed within three months after the completion of the building, a notice of lien filed October 6, 1893, is sufficient where the testimony is that the work on the houses was completed "probably some time about the middle of July," 1893, although the bill of complaint alleges, and the lienor, who was made a defendant to the bill, and the owner, in their answers, admit that the houses were completed "on or about the 1st day of July, 1893." *Emack v. Campbell*, 14 App.D.C. 186, 1899 U.S. App. LEXIS 3554 (1899).

Under Act Cong.1884, c. 143 (23 Stat. 64), a notice of mechanic's lien made out against the party who was the owner of the property at the time the right was claimed to have accrued is sufficient. *Lefler v. Forsberg*, 1 App.D.C. 36, 1893 U.S. App. LEXIS 3008 (1893).

Notice of intent to file mechanic's lien filed by construction company against purported owner of property was defective, thus rendering the notice void, as company misidentified record owner of two condominium lots that were subject of the lien, it failed to correctly set forth in the notice the renumbered condominium lot that owner still owned at time mechanic's lien was filed, leaving open possibility that a subsequent purchaser searching title would not learn of the lien, and company's counterclaim against purported owner in related suit alleging that purported owner had fraudulently conveyed two condominium lots neither affected, nor was affected by, company's failure to file correct

notice of mechanic's lien. *McNair Builders, Inc. v. 1629 16th St., L.L.C.*, 968 A.2d 505, 2009 D.C. App. LEXIS 60 (2009).

Where a mechanic's lienor has named as the alleged owner one who has no interest in the property or the lienor has named the wrong person as purported owner the notice is fatally insufficient. *McNair Builders, Inc. v. 1629 16th St., L.L.C.*, 968 A.2d 505, 2009 D.C. App. LEXIS 60 (2009).

A duly recorded notice of intention to claim a mechanic's lien, which states such intention, describes the property sought to be subjected, and states the amount for which the lien is claimed, and that it is for the construction of heating apparatus in the building erected on the property described, is sufficient under Rev.St. § 693, though the caption indicates that the contract was made with the trustees of the corporation owning the building, while it was in fact made with its agent. *Phoenix Iron Co. v. The Richmond*, 17 D.C. 180 (D.C.Sup. 1887).

A married woman was seised of property against which a claim for a mechanic's lien was filed, entitled against the husband in this form, "Thomas C. Basshor & Co. v. Hallet Kilbourn," and recites that it is the intention of said company "to hold a lien upon the property of Hallet Kilbourn, being his dwelling house, situated at the intersection of K and Seventeenth streets, on lot — in square number 164, for the amount due," etc. Held, that the description of the premises intended to be covered by the lien was not sufficient, and that no lien existed by reason of such notice. *Basshor v. Kilbourn*, 10 D.C. 273 (D.C.Sup. 1877).

A notice of lien, signed with a copartnership name, instead of the individual names of the partners, is not invalid for that reason. *Smith v. Johnson*, 9 D.C. 481 (D.C.Sup. 1876).

Where the notice of lien in describing the property gives the wrong block number, but the record referred to gives at the place of reference the proper description, and the other descriptive matter in the notice is applicable only to the proper location, and owners have not been misled, and no other rights have intervened, the lien will be upheld. *Smith v. Johnson*, 9 D.C. 481 (D.C.Sup. 1876).

§ 40-301.03. Definitions.

For the purposes of this chapter, the term:

(1) "Home improvement" means the repair, remodeling, alteration, conversion, or modernization of, or addition to, residential real property.

(2) "Home improvement contract" means any written agreement, in a form that has been approved by the Department of Consumer and Regulatory Affairs, entered into between the same contractor and the same homeowner within any 12-month period for home improvement for a specific price. For the

purposes of this section, the contract price for a home improvement contract shall be the contract price for all contracts during any 12-month period with respect to a home improvement.

(3) "Land records" means the property records maintained by the Office of the Recorder of Deeds of the District of Columbia.

(4) "Notice amount" means a written notice of amounts due to a contractor, subcontractor, materialman, or supplier for a project.

(5) "Notice of intent" means a notice of intention to enforce a lien against the owner's property for a project.

(6) "Owner" means an owner either in fee simple or a lesser estate, a lessee, or a prospective purchaser in possession under a contract of sale authorized to contract for a project.

(7) "Project" means any work or materials provided by a contractor for the erection, construction, improvement, repair of, or addition to any real property in the District of Columbia at the direction of an owner, or an owner's authorized agent, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached.

(Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1238a, as added Oct. 20, 2005, D.C. Law 16-31, § 2(a), 52 DCR 7195; Mar. 25, 2009, D.C. Law 17-353, § 101, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the section designation.

Legislative history of Law 16-31. — Law 16-31, the "Mechanic's Lien Amendment Act of 2005", was introduced in Council and assigned Bill No. 16-105 which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 7, 2005, and July 6, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-151 and transmitted to both Houses of Congress for its review. D.C. Law 16-31 became effective on October 20, 2005.

Legislative history of Law 17-353. — Law 17-353, the "Technical Amendments Act of 2008", was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Subchapter II. Subcontractor's Lien.

§ 40-303.01. Subcontractor's lien — generally.

Any person directly employed by a contractor described by § 40-301.01 (any such contractor also referred to herein as original contractor), whether the person is a subcontractor, materialman, or laborer, to furnish work or materials for the completion of the project, shall be entitled to the same rights and subject to the same obligations as the original contractor under this chapter, subject to the conditions and limitations set forth in this chapter.

(Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1239; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(a); Mar. 19,

2002, D.C. Law 14-84, § 2(b), 49 DRC 198; Oct. 20, 2005, D.C. Law 16-31, § 2(d), 52 DCR 7195.)

Cross references. — Payment as defense to assertion of lien, see § 47-2883.03.

Prior Codifications. — 1981 Ed., § 38-103. 1973 Ed., § 38-103.

Effect of amendments. — D.C. Law 14-84 rewrote the section, which had read:

"Any person directly employed by the original contractor, whether as subcontractor, materialman, or laborer, to furnish work or materials for the completion of the work contracted for as aforesaid, shall be entitled to a similar lien to that of the original contractor upon his filing a similar notice with the Recorder of Deeds of the District of Columbia to that above mentioned, subject, however, to the conditions set forth in this subchapter."

D.C. Law 16-31 rewrote section, which had read as follows: "Any person directly employed by the original contractor, whether as subcontractor, materialman, or laborer, to furnish work or material for the completion of the work contracted for, shall be entitled to a similar lien to that of the original contractor, upon filing a notice which complies with the requirements set forth in § 40-301.02, subject, however, to the conditions set forth in §§ 40-303.02 to 40-303.20."

Legislative history of Law 14-84. — For D.C. Law 14-84, see notes following § 40-301.02.

Legislative history of Law 16-31. — For Law 16-31, see notes following § 40-301.03.

CASE NOTES

ANALYSIS

Construction and application.

Contracts.

In general.

Notice of action.

Right to mechanics' lien.

Status.

Waiver.

Construction and application.

Under the mechanic's lien law of District of Columbia confining the right to file a mechanic's lien to the original contractor and to persons "directly employed" by the original contractor, a subcontractor but not a sub-subcontractor has right to file a mechanic's lien. D.C. Code, 1940, § 38-103. *Battista v. Horton*, Myers & Raymond, 128 F.2d 29, 1942 U.S. App. LEXIS 3512 (1942).

The subcontractors of a subcontractor are not entitled to a mechanic's lien under the mechanic's lien law in force in the District of Columbia. *Somerville v. Williams*, 12 App.D.C. 520, 1898 U.S. App. LEXIS 3177 (1898).

The subcontractors of a subcontractor are not entitled to a mechanic's lien under the mechanic's lien law in force in the District of Columbia. *Herrell v. Donovan*, 7 App.D.C. 322, 1895 U.S. App. LEXIS 3641 (1895).

The material men intended to be protected by the mechanic's lien law (23 Stat. 64) are only contractors and subcontractors who furnish materials under contract with the owner or principal contractor. *Leitch v. Central Dispensary & Emergency Hospital*, 6 App.D.C. 247, 1895 U.S. App. LEXIS 3588 (1895).

The subcontractors of a subcontractor are not entitled to a mechanic's lien under the mechanic's lien law in force in the District of Columbia.

Charles R. Monroe & Co. v. Hannan, 18 D.C. 197 (D.C.Sup. 1889).

Contracts.

Where general contractors and subcontractor had entered into written agreement with owners not to permit or suffer any mechanic's liens to be filed against property, but there was nothing in contract between subcontractor and sub-subcontractor which specifically imposed that condition on the sub-subcontractor, provision requiring work to be done in accordance with plans and specifications did not impose obligation on the sub-subcontractor either to furnish a release of lien or to see to it that no liens were filed against the building. *Battista v. Horton*, Myers & Raymond, 128 F.2d 29, 1942 U.S. App. LEXIS 3512 (1942).

Where general contractors and subcontractor had entered into written agreements with owner not to permit or suffer any mechanic's liens to be filed against property but contract between subcontractor and sub-subcontractor did not specifically impose that condition on the sub-subcontractor, it was entitled under its contract to retain all its legal rights until payment or a valid tender of payment. *Battista v. Horton*, Myers & Raymond, 128 F.2d 29, 1942 U.S. App. LEXIS 3512 (1942).

In general.

Where subcontractor had filed mechanic's lien for value of equipment he had replaced, his subsequent removal of such equipment was tortious, and in absence of showing why owner could not enforce right to require subcontractor to replace such equipment or pay damages, amount paid by owner for having him replace equipment was not deductible from unpaid balance which was due prime contractor and in

which other subcontractor who had filed mechanic's liens were entitled to share. D.C. Code 1961, §§ 38-103, 38-106. *National Brick & Supply Co. v. Baylor*, 299 F.2d 454, 1962 U.S. App. LEXIS 6037 (C.A.D.C. 1962).

Notice of action.

An owner need not notify a contractor's assignees that a subcontractor had instituted a mechanic's lien suit against it. *Woodward & Lothrop v. Union Trust Co. of Rochester, N.Y.*, 262 F. 627, 1920 U.S. App. LEXIS 1577 (1920).

Right to mechanics' lien.

Where owner has made advances to general contractor in order to speed up the work, prior to filing of notice of liens by subcontractors, bad faith cannot be presumed from mere fact of advance payments, and something more is necessary to support such an inference, in order to establish owner's liability to subcontractors under the statute. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, District Court's ruling that actual bad faith on owners' part need not be shown was erroneous. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Where owners had, in good faith, made advance payments to general contractor and at time notice of lien was first filed by one of the subcontractors only a few dollars remained due from owners to general contractor, the subcontractors were not entitled to mechanic's liens in excess of amount remaining due when notice of lien was filed and served. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-107, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Subcontractors have ample opportunity to protect themselves against advance payments by owner to general contractor under statute entitling subcontractors to require owner to disclose terms of general contract and state of account between himself and general contractor and to secure liens by filing them and giving notice to owner. D.C. Code 1940, §§ 38-103, 38-105, 38-107. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Status.

Where the landlord agreed to make specified improvements, and his agent and the tenant selected a superintendent of the work who received estimates for the work from separate contractors and materialmen, which were accepted by the landlord's agent and thereafter vouchers were submitted by the superinten-

dent to such agent and paid by him, the superintendent is to be deemed the agent of the landlord, and parties doing the work and furnishing the materials are not subcontractors, but are contractors within the meaning of sections 1237 and 1239, Code of Law 1901 (D.C. Code 1929, T. 25, §§ 351, 353), relating to mechanics' liens. *McLean v. Nolan*, 44 App.D.C. 1, 1915 U.S. App. LEXIS 2662 (1915).

Waiver.

A subcontractor and materialmen who have released to the owner their right to place liens on his building, on the representation of the contractor that there was sufficient money coming to him to pay all their claims, and that the owner refused to make final payment until receipt of such releases, cannot invoke the powers of a court of equity to set aside the settlement between the owner and the contractor, investigate the state of the account between them, and, if anything be found due the contractor, impress it with a trust in their favor. *Stevens v. Gordon*, 48 App.D.C. 604, 1919 U.S. App. LEXIS 2368 (1919).

Mechanics' liens filed by subcontractor could not be enforced, where subcontractor released initial mechanics' liens after being informed that money deposited by property owner with title company would not be disbursed without such releases, and where title company then released some or all of the amount deposited, regardless of whether property owner was still indebted to general contractor when subcontractor filed subsequent mechanics' liens against the property. D.C. Code § 38-103. *Hutchison Bros. Excavating Co. v. Dworman*, 307 A.2d 760, 1973 D.C. App. LEXIS 322 (1973).

Where subcontractor upon filing of mechanics' liens demanded statement from property owner of terms of contract between itself and general contractor as required by statute, and such demand was never acted on by property owner, but where subcontractor released its mechanics' liens, subcontractor by releasing the liens waived its right to such statement. D.C. Code §§ 38-103, 38-107. *Hutchison Bros. Excavating Co. v. Dworman*, 307 A.2d 760, 1973 D.C. App. LEXIS 322 (1973).

Where plasterer subcontractor finished the job and wrote letters to building owner and to supplier of materials stating the balance due on subcontract and a willingness to refrain from filing a mechanic's lien against property if owner and material supplier would acknowledge that they would protect subcontractor and owner and supplier signed requested acknowledgments, there was a meeting of the minds, consideration for such agreement, and breach of agreement imposed on owner and supplier liability for loss flowing from subcontractor's forbearance. D.C. Code §§ 38-101 to 38-103.

Kidwell & Kidwell, Inc. v. W. T. Galliher & Bro., Inc., 282 A.2d 575, 1971 D.C. App. LEXIS 216 (1971).

§ 40-303.02. Conditions and limitations.

(a) A lien in favor of parties so employed by the original contractor shall be subject to the terms and conditions of the contract, if any, between the owner and the original contractor except any terms and conditions therein that relate to the original contractor's right to waive liens on behalf of the parties employed. The lien of the parties shall be limited to the amount due, or to become due, but unpaid to the original contractor and shall be satisfied, in whole or in part, out of that amount only. If the original contractor, by reason of any breach by the original contractor of his, her, or its agreement with the owner, shall be entitled to recover less than the amount agreed upon between them, the liens of the parties employed by the original contractor shall be enforceable only to the extent of the reduced amount.

(b) If the owner, in good faith, has paid the original contractor in full for the project of the original contract (and the amount of the payment is not disputed by the original contractor), the parties employed by the original contractor shall not be entitled to a lien on the owner's real property to recover any amounts due and owing for their work or materials provided for the erection, construction, improvement, repair of, or addition to the real property; provided, that if a subcontractor, materialman, or supplier notifies the owner in writing of amounts due to the subcontractor, materialman, or supplier ("notice amount") while the owner has a balance due and owing or to become due and owing to the original contractor that is not less than the notice amount, the notice of the notice amount shall be prima facie evidence that any payment thereafter by the owner to the original contractor was not made in good faith. Any provision in a contract, purchase order, or similar document that prohibits a subcontractor, materialman, or supplier from contacting or communicating with an owner shall be void to the extent it prevents compliance with the notice requirements of this subsection.

(Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1240; Oct. 20, 2005, D.C. Law 16-31, § 2(e), 52 DCR 7195.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-104. 1973 Ed., § 38-104.

Effect of amendments. — D.C. Law 16-31 rewrote section, which had read as follows: "All such liens in favor of parties so employed by the contractor shall be subject to the terms and conditions of the original contract except such as shall relate to the waiver of liens and shall be limited to the amount to become due to the original contractor and be satisfied, in whole or

in part, out of said amount only; and if said original contractor, by reason of any breach of the contract on his part, shall be entitled to recover less than the amount agreed upon in his contract, the liens of said parties so employed by him shall be enforceable only for said reduced amount, and if said original contractor shall be entitled to recover nothing said liens shall not be enforceable at all."

Legislative history of Law 16-31. — For Law 16-31, see notes following § 40-301.03.

CASE NOTES

ANALYSIS

Payments, generally.

Review.

Right to enforcement, generally.

Payments, generally.

Where 23% of each progress report certified by architect was chargeable against down payment and note to be delivered and to begin to be due when warehouse construction work was completed and lender paid remaining 77% of amounts shown on the first ten of eleven certified progress requisitions and where owners terminated the contract, the down payment and note at least negated further obligations of owners in those amounts, and owners thus owed general contractor nothing when subcontractors filed mechanics' liens, after termination of contract, pursuant to District of Columbia statute providing in effect that if owner owes general contractor nothing subcontractors can collect nothing by mechanics' liens. D.C. Code 1961, § 38-104. *Washington Concrete Sales Corp. v. Morrisette*, 377 F.2d 137, 1966 U.S. App. LEXIS 4201 (C.A.D.C. 1966).

Where owner has made advances to general contractor in order to speed up the work, prior to filing of notice of liens by subcontractors, bad faith cannot be presumed from mere fact of advance payments, and something more is necessary to support such an inference, in order to establish owner's liability to subcontractors under the statute. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, District Court's ruling that actual bad faith on owners' part need not be shown was erroneous. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Where owners had, in good faith, made advance payments to general contractor and at

time notice of lien was first filed by one of the subcontractors only a few dollars remained due from owners to general contractor, the subcontractors were not entitled to mechanic's liens in excess of amount remaining due when notice of lien was filed and served. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-107, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

In suit by subcontractors to establish liens against owners, who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, evidence did not disclose purpose by owner to defeat subcontractors' liens. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such payment in favor of lienholder. D.C. Code 1951, §§ 38-104, 38-106. *Spencer v. Old Stein Grill*, 194 F.Supp. 274, 1961 U.S. Dist. LEXIS 3249 (D.D.C.1961).

Review.

Trial judge's findings as to balance of contract price which remained unexpended after owner had completed work following prime contractor's abandonment of work before completion, and against which subcontractors could enforce their mechanic's liens, were not clearly erroneous, in view of conflicting evidence supporting findings. D.C. Code 1961, § 38-104. *National Brick & Supply Co. v. Baylor*, 324 F.2d 892, 1963 U.S. App. LEXIS 3740 (C.A.D.C. 1963).

Right to enforcement, generally.

Supplier lienor had right to enforce its lien up to amount owner paid contractor after notice of supplier's lien, notwithstanding degree to which owner may have discharged obligation running to contractor under the contract. D.C. Code 1961, §§ 38-101 to 38-126. *Ritzenberg v. Noland Co.*, 364 F.2d 667, 1966 U.S. App. LEXIS 6003 (C.A.D.C. 1966).

§ 40-303.03. Notice to owner.

The said subcontractor or other person employed by the contractor as aforesaid, besides filing a notice with the Recorder of Deeds of the District of Columbia as aforesaid, shall serve the same upon the owner of the property upon which the lien is claimed, by leaving a copy thereof with said owner or his agent, if said owner or agent be a resident of the District, or if neither can be found, by posting the same on the premises; and on his failure to do so, or until he shall do so, the said owner may make payments to his contractor according

to the terms of his contract, and to the extent of such payments the lien of the principal contractor shall be discharged and the amount for which the property shall be chargeable in favor of the parties so employed by him reduced.

(Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1241; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(a).)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-105. 1973 Ed., § 38-105.

CASE NOTES

ANALYSIS

Advance payments.
Contractor status.
Notice to owner, generally.
Presumptions and burden of proof.

Advance payments.

Subcontractors have ample opportunity to protect themselves against advance payments by owner to general contractor under statute entitling subcontractors to require owner to disclose terms of general contract and state of account between himself and general contractor and to secure liens by filing them and giving notice to owner. D.C. Code 1940, §§ 38-103, 38-105, 38-107. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Where owner has made advances to general contractor in order to speed up the work, prior to filing of notice of liens by subcontractors, bad faith cannot be presumed from mere fact of advance payments, and something more is necessary to support such an inference, in order to establish owner's liability to subcontractors under the statute. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, District Court's ruling that actual bad faith on owners' part need not be shown was erroneous. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Where owners had, in good faith, made advance payments to general contractor and at time notice of lien was first filed by one of the subcontractors only a few dollars remained due

from owners to general contractor, the subcontractors were not entitled to mechanic's liens in excess of amount remaining due when notice of lien was filed and served. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-107, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Contractor status.

A person who agrees to act as manager and broker with respect to residential real property owned by another and at the same time, by furnishing labor and materials for its improvement and repair, acquires the status of a "contractor" is entitled to assert a statutory mechanic's lien upon the real property in question. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

Notice to owner, generally.

To protect his right to enforce a mechanic's lien, a third party doing work on real property who has reason to believe that the party who arranged for his services may be acting as a contractor rather than as agent of the owner, need only give notice to the owner and, similarly, if he should wish to discover the terms of the contract between the owner and the party who hired him, the subcontractor should make demand of the owner. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

Presumptions and burden of proof.

A subcontractor, in the absence of anything to show the contrary, will be presumed to have known the terms and conditions of the contractor's contract with the owner, in view of the fact that Code, § 1243 (D.C. Code 1929, T. 25, § 357), renders such information available. *Winter v. Hazen-Latimer Co.*, 42 App.D.C. 469, 1914 U.S. App. LEXIS 2314 (1914).

§ 40-303.04. Owner's duty.

After notice shall be filed by said party employed under the original contractor and a copy thereof served upon the owner or his agent as aforesaid,

the owner shall be bound to retain out of any subsequent payments becoming due to the contractor a sufficient amount to satisfy any indebtedness due from said contractor to the said subcontractor, or other person so employed by him, secured by lien as aforesaid, otherwise the said party shall be entitled to enforce his lien to the extent of the amount so accruing to the principal contractor.

(Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1242.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-106. 1973 Ed., § 38-106.

CASE NOTES

ANALYSIS

Amount.
Effect of payments, generally.
Enforcement.
Purpose.
Review.

Amount.

Where subcontractor had filed mechanic's lien for value of equipment he had replaced, his subsequent removal of such equipment was tortious, and in absence of showing why owner could not enforce right to require subcontractor to replace such equipment or pay damages, amount paid by owner for having him replace equipment was not deductible from unpaid balance which was due prime contractor and in which other subcontractor who had filed mechanic's liens were entitled to share. D.C. Code 1961, §§ 38-103, 38-106. *National Brick & Supply Co. v. Baylor*, 299 F.2d 454, 1962 U.S. App. LEXIS 6037 (C.A.D.C. 1962).

A subcontractor, who did work upon and furnished materials for a building under contract with the contractor, who thereafter absconded upon receiving payment in full for work already done, the owner having duly made the payments without notice of the subcontractor's right, has no lien or claim upon moneys subsequently accruing to the contractor's surety by reason of its completion of the work under power reserved to it in the bond, where, as in the District of Columbia, the statute limits the subcontractor's lien to money due the contractor from the owner at the time the latter receives notice from the subcontractor. *Winter v. Hazen-Latimer Co.*, 42 App.D.C. 469, 1914 U.S. App. LEXIS 2314 (1914).

Effect of payments, generally.

Mechanic's lienors were not entitled to satisfy their liens out of sums which owner had paid prime contractor before liens were filed and before owner learned that prime contractor had abandoned contract. D.C. Code 1961, §§ 38-103, 38-106. *National Brick & Supply*

Co. v. Baylor, 299 F.2d 454, 1962 U.S. App. LEXIS 6037 (C.A.D.C. 1962).

Payments made by owner to other subcontractors through general contractor, after plaintiff-subcontractor's filing of lien, were considered payments to general contractor, within statute requiring owner to withhold such payment in favor of lienholder. D.C. Code 1951, §§ 38-104, 38-106. *Spencer v. Old Stein Grill*, 194 F.Supp. 274, 1961 U.S. Dist. LEXIS 3249 (D.D.C.1961).

Where there was no indication that owner, in agreeing to pay subcontractors amounts owed them by contractor for work done after contractor abandoned construction project if subcontractors would proceed with work toward project's ultimate completion, never expected to or did recoup such additional costs from contractor, but instead considered payments to subcontractors to be cost of completing project additional to whatever financial obligation owner might have had to contractor under construction contract, remaining subcontractor was not entitled to foreclose its mechanic's lien claim on theory that payments made by owner to other subcontractors constituted "subsequent payments becoming due to contractor," on which amount should have been withheld for remaining subcontractor's benefit. D.C. Code § 38-106. *Union Wesley A.M.E. Zion Church v. Rider Enterprises, Inc.*, 369 A.2d 608, 1977 D.C. App. LEXIS 418 (1977).

Enforcement.

Supplier lienor had right to enforce its lien up to amount owner paid contractor after notice of supplier's lien, notwithstanding degree to which owner may have discharged obligation running to contractor under the contract. D.C. Code 1961, §§ 38-101 to 38-126. *Ritzenberg v. Noland Co.*, 364 F.2d 667, 1966 U.S. App. LEXIS 6003 (C.A.D.C. 1966).

Oral promise of owner to pay subcontractors amounts due them from contractor when it abandoned project, in exchange for subcontractors' agreement to continue working toward

ultimate completion of project, was enforceable despite statute providing that subcontractor employed under original contractor would not be entitled to personal judgment or decree against owner of premises for amount due to him from original contractor except upon special promise of such owner, in writing, for sufficient consideration, to be answerable for the same. D.C. Code §§ 28-3502, 38-106, 38-121. *Union Wesley A.M.E. Zion Church v. Rider Enterprises, Inc.*, 369 A.2d 608, 1977 D.C. App. LEXIS 418 (1977).

Purpose.

Purpose and effect of statute are not to expose owner to liability to lienors greater than

that owed to contractor. D.C. Code 1961, §§ 38-101 to 38-126. *Ritzenberg v. Noland Co.*, 364 F.2d 667, 1966 U.S. App. LEXIS 6003 (C.A.D.C. 1966).

Review.

Trial judge's findings as to balance of contract price which remained unexpended after owner had completed work following prime contractor's abandonment of work before completion, and against which subcontractors could enforce their mechanic's liens, were not clearly erroneous, in view of conflicting evidence supporting findings. D.C. Code 1961, § 38-104. *National Brick & Supply Co. v. Baylor*, 324 F.2d 892, 1963 U.S. App. LEXIS 3740 (C.A.D.C. 1963).

§ 40-303.05. Subcontractor entitled to know terms of contract.

Any subcontractor or other person employed by the contractor as aforesaid shall be entitled to demand of the owner or his authorized agent a statement of the terms under which the work contracted for is being done and the amount due or to become due to the contractor executing the same, and if the owner or his agent shall fail or refuse to give the said information, or willfully state falsely the terms of the contract or the amounts due or unpaid thereunder, the said property shall be liable to the lien of the said party demanding said information, in the same manner as if no payments had been made to the contractor before notice served on the owner as aforesaid.

(Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1243.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-107. 1973 Ed., § 38-107.

CASE NOTES

ANALYSIS

Contractors.

In general.

Presumptions and burden of proof.

Sufficiency of evidence.

Waiver of right to statement.

Contractors.

The mechanic's lien statute can be construed to permit a real estate management agent to have the status of a contractor if he furnishes labor and materials for the improvement of the property. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

In general.

Subcontractors have ample opportunity to protect themselves against advance payments by owner to general contractor under statute entitling subcontractors to require owner to

disclose terms of general contract and state of account between himself and general contractor and to secure liens by filing them and giving notice to owner. D.C. Code 1940, §§ 38-103, 38-105, 38-107. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

To protect his right to enforce a mechanic's lien, a third party doing work on real property who has reason to believe that the party who arranged for his services may be acting as a contractor rather than as agent of the owner, need only give notice to the owner and, similarly, if he should wish to discover the terms of the contract between the owner and the party who hired him, the subcontractor should make demand of the owner. D.C. Code 1981, § 38-101. *Moore v. Axelrod*, 443 A.2d 40, 1982 D.C. App. LEXIS 310 (1982).

Presumptions and burden of proof.

Subcontractor was chargeable with notice of terms of general contract. D.C. Code 1961,

§ 38-107. National Brick & Supply Co. v. Baylor, 299 F.2d 454, 1962 U.S. App. LEXIS 6037 (C.A.D.C. 1962).

A subcontractor, in the absence of anything to show the contrary, will be presumed to have known the terms and conditions of the contractor's contract with the owner, in view of the fact that Code, § 1243 (D.C. Code 1929, T. 25, § 357), renders such information available. Winter v. Hazen-Latimer Co., 42 App.D.C. 469, 1914 U.S. App. LEXIS 2314 (1914).

Sufficiency of evidence.

Evidence supported finding that owners had advised subcontractors seeking to enforce mechanics' liens as to terms of warehouse construction contract, status of payments, etc., in

accordance with District of Columbia statute. D.C. Code 1961, § 38-107. Washington Concrete Sales Corp. v. Morrisette, 377 F.2d 137, 1966 U.S. App. LEXIS 4201 (C.A.D.C. 1966).

Waiver of right to statement.

Where subcontractor upon filing of mechanics' liens demanded statement from property owner of terms of contract between itself and general contractor as required by statute, and such demand was never acted on by property owner, but where subcontractor released its mechanics' liens, subcontractor by releasing the liens waived its right to such statement. D.C. Code §§ 38-103, 38-107. Hutchison Bros. Excavating Co. v. Dworman, 307 A.2d 760, 1973 D.C. App. LEXIS 322 (1973).

§ 40-303.06. Advance payments.

If the owner, for the purpose of avoiding the provisions hereof, and defeating the lien of the subcontractor or other person employed by the contractor, as aforesaid, shall make payments to the contractor in advance of the time agreed upon therefor in the contract, and the amount still due or to become due to the contractor shall be insufficient to satisfy the liens of the subcontractors or others so employed by the contractor, the property shall remain subject to said liens in the same manner as if such payments had not been made.

(Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1244.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-108. 1973 Ed., § 38-108.

CASE NOTES

ANALYSIS

Bad faith, generally.
Payments in good faith.
Review.
Sufficiency of evidence.

Bad faith, generally.

Where owner has made advances to general contractor in order to speed up the work, prior to filing of notice of liens by subcontractors, bad faith cannot be presumed from mere fact of advance payments, and something more is necessary to support such an inference, in order to establish owner's liability to subcontractors under the statute. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. Merrill v. B.R. Acker Co., 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Payments in good faith.

Where owners had, in good faith, made advance payments to general contractor and at time notice of lien was first filed by one of the subcontractors only a few dollars remained due

from owners to general contractor, the subcontractors were not entitled to mechanic's liens in excess of amount remaining due when notice of lien was filed and served. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-107, 38-108. Merrill v. B.R. Acker Co., 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Review.

In suit by subcontractors to establish liens against owners who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, District Court's ruling that actual bad faith on owners' part need not be shown was erroneous. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. Merrill v. B.R. Acker Co., 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

Sufficiency of evidence.

In suit by subcontractors to establish liens against owners, who had made advance payments to general contractor prior to filing of notice of liens by subcontractors, evidence did not disclose purpose by owner to defeat subcon-

tractors' liens. D.C. Code 1940, §§ 38-103, 38-104, 38-105, 38-108. *Merrill v. B.R. Acker Co.*, 142 F.2d 102, 1944 U.S. App. LEXIS 3268 (1944).

§ 40-303.07. Priority of lien.

The lien hereby given shall be preferred to all judgments, mortgages, deeds of trusts, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building, as well as to conveyances executed, but not recorded, before that time, to which recording is necessary, as to third persons; except that nothing herein shall affect the priority of a mortgage or deed of trust given to secure the purchase money for the land, if the same be recorded within 10 days from the date of the acknowledgment thereof. When a mortgage or deed of trust of real estate securing advances thereafter to be made for the purpose of erecting buildings and improvements thereon is given, or when an owner of lands contracts with a builder for the sale of lots and the erection of buildings thereon, and agrees to advance moneys toward the erection of such buildings, the lien hereinbefore authorized shall have priority to all advances made after the filing of said notices of lien, and the lien shall attach to the right, title, and interest of the owner in said building and land to the extent of all advances which shall have become due after the filing of such notice of such lien, and shall also attach to and be a lien on the right, title, and interest of the person so agreeing to purchase said land at the time of the filing of said notices of lien. When a building shall be erected or repaired by a lessee or tenant for life or years, or a person having an equitable estate or interest in such building or land on which it stands, the lien created by this chapter shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owners.

(Mar. 3, 1901, 31 Stat. 1385, ch. 854, § 1245.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-109. 1973 Ed., § 38-109.

CASE NOTES

ANALYSIS

Extinguishment of liens.
In general.
Priority, generally.
Pro rata distribution.
Recorded interests.
Transfer of property.

Extinguishment of liens.

Where purchase price of property, at deed of trust foreclosure sale was less than amount of advances made under construction loan, which constituted an interest superior to that of mechanics' lien claimants, the mechanics' liens were extinguished. D.C. Code § 38-109. *Waco Scaffold & Shoring Co. v. 425 Eye Street Asso-*

ciates, 355 A.2d 780, 1976 D.C. App. LEXIS 517 (1976).

In general.

A mechanic's lien priority over a construction loan secured by a deed of trust recorded prior to commencement of work is granted by District of Columbia only with respect to advances made after mechanic files a notice of intention to assert a lien. D.C. Code § 38-109. *Electrical Equipment Co. v. Security Nat'l Bank*, 606 F.2d 1357, 1979 U.S. App. LEXIS 12140 (C.A.D.C. 1979).

Affording a mechanic's lien priority over interest on prefiling advances, whether accruing before or after filing, does violence to both letter and policy of governing District of Columbia

statute. D.C. Code § 38-109. *Electrical Equipment Co. v. Security Nat'l Bank*, 606 F.2d 1357, 1979 U.S. App. LEXIS 12140 (C.A.D.C. 1979).

Priority, generally.

Claim made by bank to payment of loan to developers from foreclosure proceeds of interest accruing after contractor filed its notice of mechanic's lien on loan advances predating filing did not take precedence over contractor's lien under law of District of Columbia where automatically accruing interest was not "advanced" in any accepted sense of word because priority was limited by statute to "advance" and statute also placed emphasis on public recordation as basis for setting priorities among construction lenders and mechanics. D.C. Code § 38-109. *Electrical Equipment Co. v. Security Nat'l Bank*, 606 F.2d 1357, 1979 U.S. App. LEXIS 12140 (C.A.D.C. 1979).

Where construction lender recorded its deed of trust after commencement of work by construction companies but the latter filed notice of intent to hold a mechanics' lien only after the lender had advanced money, the mechanics' liens were subordinate to the claim of the construction lender to extent of loan advances made prior to recording of the mechanics' liens. D.C. Code § 38-109. *Waco Scaffold & Shoring Co. v. 425 Eye Street Associates*, 355 A.2d 780, 1976 D.C. App. LEXIS 517 (1976).

Holder of purchase-money deed of trust containing provision that it should be subordinate to any construction loan and all advances made under construction loan was, on foreclosure of first deed of trust held by construction lender, entitled to priority with respect to surplus remaining after satisfaction of construction lender's debt and payment of foreclosure expenses, notwithstanding construction lender's claim to surplus to satisfy mechanic's lien it had paid against property. D.C. Code §§ 15-104, 38-109. *Guardian Federal Sav. & Loan*

Asso. v. Suskind, 265 A.2d 295, 1970 D.C. App. LEXIS 279 (App. 1970).

Pro rata distribution.

When the aggregate of claims for which mechanics' liens are filed exceeds the balance in the owner's hands, such balance should be distributed pro rata; and for claims which have already been paid or satisfied by the owner out of such balance, she should, on an accounting, be given credit according to the pro rata share to which such claimants would have been entitled. *Emack v. Campbell*, 14 App.D.C. 186, 1899 U.S. App. LEXIS 3554 (1899).

Recorded interests.

Recording of mechanics' liens by two construction contractors did not relate back to commencement of work by third contractor, which started to work before construction lender's deed of trust was recorded, for purpose of determining priority of liens. D.C. Code § 38-109. *Waco Scaffold & Shoring Co. v. 425 Eye Street Associates*, 355 A.2d 780, 1976 D.C. App. LEXIS 517 (1976).

Mechanics' lien did not take precedence over recorded deed of trust where mechanics' lienor did not commence work until after construction lender recorded the deed of trust. D.C. Code § 38-109. *Waco Scaffold & Shoring Co. v. 425 Eye Street Associates*, 355 A.2d 780, 1976 D.C. App. LEXIS 517 (1976).

Relation back preference of mechanic's lien does not affect priority of recorded purchase-money deed of trust, a priority which exceeds even that of a previous judgment. D.C. Code § 38-109. *Guardian Federal Sav. & Loan Asso. v. Suskind*, 265 A.2d 295, 1970 D.C. App. LEXIS 279 (App. 1970).

Transfer of property.

Conveyance of property after mechanic's lien attached held not to affect validity of lien, nor make grantee personally liable (D.C. Code 1929, T. 25, § 359). *Deland v. Wagner*, 64 F.2d 552, 1933 U.S. App. LEXIS 4152 (1933).

§ 40-303.08. How lien enforced.

The proceeding to enforce the lien hereby given shall be a bill in equity, which shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the Recorder of Deeds, and a copy thereof served on the owner or his agent, if so served, and the time when the building or the work thereon was completed, with a description of the premises and other material facts; and shall pray that the owner's interest in the premises be sold and the proceeds of sale applied to the satisfaction of the lien. If such suit be brought by any person entitled, other than the principal contractor, the latter shall be made a party defendant, as well as all other persons who may have filed notices of liens, as aforesaid. All or any number of persons having liens on the same property may join in one suit, their respective claims being distinctly stated in separate paragraphs;

and if several suits are brought by different claimants and are pending at the same time, the court may order them to be consolidated.

(Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1246; July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 15(b); Oct. 20, 2005, D.C. Law 16-31, § 2(f), 52 DCR 7195.)

Cross references. — Service by publication on nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

Section references. — This section is referred to in §§ 40-303.01 and 40-305.01.

Prior Codifications. — 1981 Ed., § 38-110.

1973 Ed., § 38-110.

Effect of amendments. — D.C. Law 16-31 substituted “owner’s interest in the premises be sold” for “premises be sold”.

Legislative history of Law 16-31. — For Law 16-31, see notes following § 40-301.03.

CASE NOTES

ANALYSIS

Counsel fees.
Enforceability, generally.
Failure to file lien.
Judgment.
Nature of remedy.
Review.

Counsel fees.

Unless expressly provided for in the building contract, counsel fees incurred by the owner in defending suits brought to enforce mechanics’ liens cannot be recovered as damages in a suit on the contractor’s bond, conditioned upon the faithful performance of the contract, which provides that the property shall be delivered free of all liens or right to file liens. *Donovan v. Johnson*, 13 App.D.C. 356, 1898 U.S. App. LEXIS 3220 (1898).

Enforceability, generally.

Supplier lienor had right to enforce its lien up to amount owner paid contractor after notice of supplier’s lien, notwithstanding degree to which owner may have discharged obligation running to contractor under the contract. D.C. Code 1961, §§ 38-101 to 38-126. *Ritzenberg v. Noland Co.*, 364 F.2d 667, 1966 U.S. App. LEXIS 6003 (C.A.D.C. 1966).

Oral promise of owner to pay subcontractors amounts due them from contractor when it abandoned project, in exchange for subcontractors’ agreement to continue working toward ultimate completion of project, was enforceable despite statute providing that subcontractor employed under original contractor would not be entitled to personal judgment or decree against owner of premises for amount due to him from original contractor except upon special promise of such owner, in writing, for sufficient consideration, to be answerable for the same. D.C. Code §§ 28-3502, 38-106, 38-121. *Union Wesley A.M.E. Zion Church v. Rider Enterprises, Inc.*, 369 A.2d 608, 1977 D.C. App. LEXIS 418 (1977).

Failure to file lien.

One failing to file mechanic’s lien in time

cannot enforce it under statute (Code, §§ 1238, 1239, 1246 [D.C. Code 1929, T. 25, §§ 352, 353, 360]). *Harper v. Galliher & Huguely*, 29 F.2d 452, 1928 U.S. App. LEXIS 2707 (1928).

Judgment.

Fact that judgment foreclosing subcontractor’s lien against owners of leasehold interest was in less amount than claim against general contractor did not automatically reopen or validate judgment against general contractor, nor did fact that no lien at all was recognized in final judgment as against owner of fee. *Redding & Co. v. Russwine Constr. Corp.*, 463 F.2d 929, 1972 U.S. App. LEXIS 10466 (C.A.D.C. 1972).

Personal judgment obtained by contractor against purported owner, which expressly reserved a ruling with respect to validity of mechanic’s lien, could not serve as basis of judgment against surety under its mechanic’s lien undertaking in view of failure to show purported owner’s interest in property in question. D.C. Code 1961, §§ 38-101, 38-102, 38-110, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Mere fact that mechanic’s lien undertaking had been offered and filed did not estop surety sued on personal judgment obtained against its insured from denying its insured’s ownership of premises in question. D.C. Code 1961, §§ 38-101, 38-102, 38-110, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Nature of remedy.

Suit in equity held proper remedy of materialmen to enforce liens against trustees under deed of trust for payment of surplus money to mortgagor where trustees had knowledge of liens (D.C. Code 1929, T. 25, § 360). *Roth v. Eisinger Mill & Lumber Co.*, 70 F.2d 294, 1934 U.S. App. LEXIS 4137 (1934).

The lien which a builder, in Washington, D.C., has under Acts Md. 1791, c. 45, § 10, is a

remedy in rem only, and not in personam. *Homans v. Coombe*, 12 F.Cas. 444, 1828 U.S. App. LEXIS 349 (1828).

Any inconvenience which may arise from the prosecution in equity of such petty claims for less than \$50 under Mechanics' Lien Law cannot interfere with court's duty to enforce claimant's clear right. *Hollohan v. Young*, 21 D.C. 183, 1892 U.S. App. LEXIS 2144 (D.C.Sup. 1892).

A personal action on the common counts is not at all appropriate to the remedy which the mechanic's lien law has rendered necessary in order to enforce such a lien. *Phillips v. Coburn*, 9 D.C. 409 (D.C.Sup. 1876).

Review.

Record failed to support claim of error in

dismissal of complaint seeking to enforce mechanic's lien on ground that there was no testimony establishing that plaintiff's services had been engaged by agent of owner or that owner himself had agreed to pay for repairing and remodeling work done by plaintiff. D.C. Code 1961, §§ 14-302, 38-111. *Berenter v. Staggars*, 362 F.2d 971, 1966 U.S. App. LEXIS 6022 (C.A.D.C. 1966).

In action to enforce a mechanic's lien for labor and materials in remodeling of defendant's property, finding of the district court that there was due the plaintiff \$7,750 was not "clearly erroneous". D.C. Code 1961, § 38-110 et seq.; Fed.Rules Civ.Proc. rule 52(a), 18 U.S.C. *Curtis v. Chambers*, 310 F.2d 857, 1962 U.S. App. LEXIS 3775 (C.A.D.C. 1962).

§ 40-303.09. Decree of sale.

If the right of the complainant, or of any of the parties to the suit, to the lien herein provided for shall be established, the court shall decree a sale of the land and premises or the estate and interest therein of the person who, as owner, contracted for the erection, repair, improvement of, or addition to the building, as aforesaid.

(Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1247.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-111. 1973 Ed., § 38-111.

§ 40-303.10. Subcontractor preferred to contractor.

If the original contractor and the persons contracting or employed under him shall both have filed notices of liens, as aforesaid, the latter shall first be satisfied out of the proceeds of sale before the original contractor, but not in excess of the amount due him, and the balance, if any, of said amount shall be paid to him.

(Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1248.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-112. 1973 Ed., § 38-112.

§ 40-303.11. Distribution of sale proceeds.

If one, or some only, of the persons employed under the original contractor shall have served notice on the owner, as aforesaid, before payments made by him to the original contractor, said party or parties shall be entitled to priority of satisfaction out of said proceeds to the amount of such payments; but, subject to this provision, if the proceeds of sale, after paying there out the costs of the suit, shall be insufficient to satisfy the liens of said parties employed under the original contractor the said proceeds shall be distributed ratably

among them to the extent of the payments accruing to the original contractor subsequently to the service of notice on the owner by said parties, as aforesaid.

(Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1249.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-113. 1973 Ed., § 38-113.

§ 40-303.12. Several buildings.

In case of labor done or materials furnished for the erection or repair of 2 or more buildings joined together and owned by the same person or persons, it shall not be necessary to determine the amount of work done or materials furnished for each separate building, but only the aggregate amount upon all the buildings so joined, and the decree may be for the sale of all the buildings and the land on which they are erected as one building, or they may be sold separately if it shall seem best to the court.

(Mar. 3, 1901, 31 Stat. 1386, ch. 854, § 1250.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-114. 1973 Ed., § 38-114.

CASE NOTES

In general.

Materialmen who furnished material for semidetached dwellings erected on separate lots properly filed against each of lots separate lien notices, each of which was in full amount for balance due, and trustees under deed of trust were not prejudiced by waiver of such liens as to one of lots (D.C. Code 1929, T. 25, § 364). *Roth v. Eisinger Mill & Lumber Co.*, 70 F.2d 294, 1934 U.S. App. LEXIS 4137 (1934).

While two or more distinct and separate notices may be comprised in one single instrument of writing, and may be enforced in one proceeding in equity, where the parties are the same, two separate and distinct buildings, or two separate and distinct groups of buildings, cannot be treated as one and the same building, for the purpose of the notice required to be

given of mechanics' liens, under Code, §§ 1237-1264 (see D.C. Code 1929, T. 13, §§ 3-6; T. 25, § 351 et seq.), where there are other rights to be affected thereby than those of the principal contractor. *Alfred Richards Brick Co. v. Trott*, 23 App.D.C. 284, 1904 U.S. App. LEXIS 5254 (1904).

Under Code, §§ 1237-1264 (see D.C. Code 1929, T. 13, §§ 3-6; T. 25, § 351 et seq.), providing for the allowance to contractors, subcontractors, and materialmen of a lien for improvements on a building, a single mechanic's lien should cover no more than a single building, except in cases where there are two or more buildings joined together and owned by a single person. *Alfred Richards Brick Co. v. Trott*, 23 App.D.C. 284, 1904 U.S. App. LEXIS 5254 (1904).

§ 40-303.13. When suit to be commenced.

(a)(1) Any person with a lien and who has recorded a valid notice of intent shall only enforce the lien by:

(A) Filing suit under § 40-303.08 to enforce the lien at anytime within 180 days after the date that the notice of intent is recorded in the land records; and

(B) Recording, within 10 days of filing suit, a notice of pendency of action in accordance with § 42-1207(b) in the land records.

(2) Failure to file suit within the 180-day period or to file timely a notice of pendency of action shall terminate the lien.

(Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1251; Mar. 19, 2002, D.C. Law 14-84, § 2(c), 49 DCR 198; Oct. 19, 2002, D.C. Law 14-213, § 25, 49 DCR 8140; Oct. 20, 2005, D.C. Law 16-31, § 2(g), 52 DCR 7195.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-115. 1973 Ed., § 38-115.

Effect of amendments. — D.C. Law 14-84 rewrote the section, which had read:

“Any person, entitled to a lien, as aforesaid, may commence his suit to enforce the same at any time within a year from and after the filing of the notice aforesaid or within 6 months from the completion of the building or repairs aforesaid, on his failure to do which the said lien shall cease to exist, unless his said claim be not due at the expiration of said periods, in which case the action must be commenced within 3 months after the said claim shall have become due.”

D.C. Law 14-213, in subsec. (a), substituted “; provided, that if the claim is not due” for “; provided, that the claim shall not be due”.

D.C. Law 16-31 rewrote the section.

Legislative history of Law 14-84. — For D.C. Law 14-84, see notes following § 40-301.02.

Legislative history of Law 14-213. — Law 14-213, the “Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-671, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-459 and transmitted to both Houses of Congress for its review. D.C. Law 14-213 became effective on October 19, 2002.

Legislative history of Law 16-31. — For Law 16-31, see notes following § 40-301.03.

CASE NOTES

ANALYSIS

Abandonment.

In general.

Questions of law and fact.

Abandonment.

When contractor abandons project prior to completion, applicable time period for asserting mechanic's lien runs from date of abandonment. D.C. Code §§ 38-102, 38-115. *Malcolm Price, Inc. v. Sloane*, 308 A.2d 779, 1973 D.C. App. LEXIS 344 (1973).

In general.

A person furnishing materials and labor in the erection of a building in the city of Washington, D.C., cannot claim the benefit of the lien given by Act March 2, 1833, c. 80 (4 Stat. 659), after the expiration of two years from the

commencement of the building, unless an action shall have been instituted or the claim filed in the clerk's office within three months after performing the work and furnishing the materials. *McClellan v. Withers*, 15 F.Cas. 1270, 1836 U.S. App. LEXIS 274 (1836).

Questions of law and fact.

Summary judgment rendered in action to enforce mechanic's lien created issue of fact as to whether contractor abandoned project when statement was not paid or terminated work some time thereafter when owners' counteroffer was clearly rejected and thus there was issue of fact as to whether notice of mechanic's lien was timely filed. D.C. Code §§ 38-102, 38-115; D.C. Code SCR, Civil Rules 56, 56(e). *Malcolm Price, Inc. v. Sloane*, 308 A.2d 779, 1973 D.C. App. LEXIS 344 (1973).

§ 40-303.14. Extent of land bound by lien.

If there be any contest as to the dimensions of the land claimed to be subjected to the lien aforesaid, the court shall determine the same upon the evidence and describe the same in the decree of sale.

(Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1252; Oct. 20, 2005, D.C. Law 16-31, § 2(h), 52 DCR 7195.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-116.

1973 Ed., § 38-116.

Effect of amendments. — D.C. Law 16-31 substituted “land” for “ground”.

Legislative history of Law 16-31. — For Law 16-31, see notes following § 40-301.03.

§ 40-303.15. Entry of satisfaction.

Whenever any person having a lien by virtue hereof shall have received satisfaction of his claim and cost, he shall, on the demand, and at the cost of the person interested, enter said claim satisfied, in the clerk's office aforesaid, and on his failure or refusal so to do he shall forfeit \$50 to the party aggrieved, and all damages that the latter may have sustained by reason of such failure or refusal.

(Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1253.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-117. 1973 Ed., § 38-117.

§ 40-303.16. Payment into court and release.

(a) In any suit to enforce a lien under this chapter, the owner of the building and premises to which the lien may have attached may be allowed to either:

(1) Pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct; or

(2) File a written undertaking, with one or more sureties, to be approved by the court, to the effect that he or she and they will pay the judgment that may be recovered, which may include interest and costs; provided, that:

(A) Where the surety is to be provided by bond, only one bond shall be required; and

(B) The judgment shall be rendered against all the persons so undertaking.

(b) On the payment of the money into court, or the approval of the undertaking pursuant to subsection (a)(2) of this section, the property shall be released from the lien, and any money so paid in shall be subject to the final decree of the court.

(c)(1) No undertaking pursuant to subsection (a)(2) of this section shall be approved by the court until the complainant shall have had at least 5 days notice of the defendant's intention to apply to the court for the approval, which notice shall give the name and residence of the person to be offered as surety, or persons if the court determines more than a single surety is required, and the time when the motion for the approval will be made.

(2) Any surety shall make oath, if required, that he or she is worth, over and above all debts and liabilities, double the amount of the lien.

(3) The complainant may appear and object to the approval.

(Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1254; June 5, 2012, D.C. Law 19-138, § 2(b), 59 DCR 2553.)

Cross references. — Condominiums, see § 42-1902.02.
Horizontal property regimes, see § 42-2025.

Section references. — This section is referred to in § 40-303.01.
Prior Codifications. — 1981 Ed., § 38-118.

1973 Ed., § 38-118.

Effect of amendments. — D.C. Law 19-138 rewrote the section, which formerly read:

"In any suit to enforce a lien hereunder, the owner of the building and premises to which such lien may have attached, as aforesaid, may be allowed to pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct, or he may file a written undertaking, with 2 or more sureties, to be approved by the court, to the effect that he and they will pay the judgment that may be recovered and costs, which judgment shall be rendered against all the persons so undertaking. On the payment of said money into court, or the approval of such undertaking, the property shall be released

from such lien, and any money so paid in shall be subject to the final decree of the court. No such undertaking shall be approved by the court until the complainant shall have had at least 2 days notice of the defendant's intention to apply to the court therefor, which notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath, if required, that they are worth, over and above all debts and liabilities, double the amount of said lien. The complainant may appear and object to such approval."

Legislative history of Law 19-138. — For history of Law 19-138, see notes under § 40-301.02.

CASE NOTES

ANALYSIS

Compliance with statute.

In general.

Judgment.

Sureties.

Compliance with statute.

Where statute prescribed a specific method for removal of mechanic's liens from records by paying into court amount claimed plus interest and costs or by filing a bond, a direct action to remove the lien could not be maintained, notwithstanding plaintiff's contention that he was without funds either to pay amounts into court or to secure a bond and that delay incident to ordinary procedure would cause him irreparable damage, particularly where owner admitted that he had deposited sufficient money to cover lien with a title insurance company. D.C. Code 1940, §§ 38-115, 38-118, 38-119. *Clarke v. Huff*, 165 F.2d 247, 1947 U.S. App. LEXIS 2059 (1947).

Under Code of Law 1901, §§ 1239, 1246, 1254, 1255 (D.C. Code 1929, T. 25, §§ 353, 360, 368, 369), providing that an owner may pay money demanded in mechanic's lien suit into court and be relieved from further liability, a payment into court by an owner after a subcontractor had filed a lien, but before suit had been started, and later applied by the court to pay such subcontractor's lien, constitutes a sub-

stantial compliance with the statute, and the owner is not liable to pay such sum a second time to the contractor's assignee. *Woodward & Lothrop v. Union Trust Co. of Rochester, N.Y.*, 262 F. 627, 1920 U.S. App. LEXIS 1577 (1920).

In general.

Mechanic's lien undertaking, when approved by court, becomes a substitute for interest in the premises which was subject to a lien. D.C. Code 1961, §§ 38-101, 38-102, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Judgment.

Judgment which establishes a right to lien upon interest subject to lien is judgment which is secured by mechanic's lien undertaking. D.C. Code 1961, §§ 38-101, 38-102, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Sureties.

Surety's obligation under mechanic's lien undertaking is confined to purpose of mechanic's lien statute. D.C. Code 1961, §§ 38-101, 38-102, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

§ 40-303.16a. Effect of failure to file notice. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1387, c. 854, § 1254a, as added Mar. 19, 2002, D.C. Law 14-84, § 2(d), 49 DCR 198; Oct. 20, 2005, D.C. Law 16-31, § 2(i), 52 DCR 7195.)

Legislative history of Law 14-84. — For D.C. Law 14-84, see notes following § 40-301.02.

Legislative history of Law 16-31. — For Law 16-31, see notes following § 40-301.03.

§ 40-303.17. Undertaking to discharge liens before suit.

Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, and said undertaking shall be to the effect that the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien.

(Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1255.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-119. 1973 Ed., § 38-119.

CASE NOTES

ANALYSIS

In general.
Judgment.
Sureties.

In general.

Mechanic's lien undertaking, when approved by court, becomes a substitute for interest in the premises which was subject to a lien. D.C. Code 1961, §§ 38-101, 38-102, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Judgment.

Personal judgment obtained by contractor against purported owner, which expressly reserved a ruling with respect to validity of mechanic's lien, could not serve as basis of judgment against surety under its mechanic's lien undertaking in view of failure to show purported owner's interest in property in question. D.C. Code 1961, §§ 38-101, 38-102, 38-110, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d

430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Judgment which establishes a right to lien upon interest subject to lien is judgment which is secured by mechanic's lien undertaking. D.C. Code 1961, §§ 38-101, 38-102, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Sureties.

Surety's obligation under mechanic's lien undertaking is confined to purpose of mechanic's lien statute. D.C. Code 1961, §§ 38-101, 38-102, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

Mere fact that mechanic's lien undertaking had been offered and filed did not estop surety sued on personal judgment obtained against its insured from denying its insured's ownership of premises in question. D.C. Code 1961, §§ 38-101, 38-102, 38-110, 38-118, 38-119. *Hartford Acci. & Indem. Co. v. A. B. C. Cleaning Contractors, Inc.*, 350 F.2d 430, 1965 U.S. App. LEXIS 4694 (C.A.D.C. 1965).

§ 40-303.18. Decree against sureties.

If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; if the undertaking be approved after suit brought, the said sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the sureties as well as the owner.

(Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1256.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-120. 1973 Ed., § 38-120.

CASE NOTES

ANALYSIS

Creditor's rights.
In general.

Creditor's rights.

A suretyship contract for payment of labor and materials for construction of a building is basically a promise by surety to owner of building that debts of contractor will be paid, and extent of surety's undertaking is measured by terms of bond and statute requiring its execution, and although creditor is not a party to the contract, he is a donee of the promise and by the agreement and statute he acquires a direct right of action against the surety, but since foundation of any of his rights is the promisor's contract, his rights are restricted by the terms

of the promise and any conditions, express or implied, affecting them. *U.S. Plywood Corp. v. Continental Cas. Co.*, 157 A.2d 286, 1960 D.C. App. LEXIS 156 (Cr.App. 1960).

In general.

Where owner, in suit to enforce mechanic's lien, filed undertaking and obtained release of lien, decree held properly rendered against owner and surety (D.C. Code 1929, T. 25, §§ 368, 370). *Deland v. Wagner*, 64 F.2d 552, 1933 U.S. App. LEXIS 4152 (1933).

Materialmen cannot recover against surety under bond naming owner as sole obligee and stipulating for payment of debts incurred for labor and materials. *Sun Indemnity Co. of New York v. American University, Washington, D.C.*, 26 F.2d 556, 1928 U.S. App. LEXIS 3720 (1928).

§ 40-303.19. No action by subcontractor against owner.

No subcontractor, materialman, or workman employed under the original contractor shall be entitled to a personal judgment or decree against the owner of the premises for the amount due to him from said original contractor, except upon a special promise of such owner, in writing, for a sufficient consideration, to be answerable for the same.

(Mar. 3, 1901, 31 Stat. 1387, ch. 854, § 1257.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-121. 1973 Ed., § 38-121.

CASE NOTES

Necessity for written agreement.

An action instituted in the District of Columbia upon the promise of the owner of a building under construction to pay materialmen for material furnished to the principal contractor is governed by Code, § 1257, D.C. Code 1929, T. 25, § 371, forbidding a judgment on such a promise when not in writing, especially where the promise was entered into and partly performed in the District of Columbia, and although both the owner's contract with the contractor and the latter's contract with the materialmen were to be performed in Maryland. *Mathews v. Libbey Bros.*, 42 App.D.C. 272, 1914 U.S. App. LEXIS 2270 (1914).

A materialman's promise to refrain from prosecuting a lien against the premises improved is, when acted upon, a sufficient consid-

eration for the owner's promise to pay for the materials furnished to his contractor. *Mathews v. Libbey Bros.*, 42 App.D.C. 272, 1914 U.S. App. LEXIS 2270 (1914).

Oral promise of owner to pay subcontractors amounts due them from contractor when it abandoned project, in exchange for subcontractors' agreement to continue working toward ultimate completion of project, was enforceable despite statute providing that subcontractor employed under original contractor would not be entitled to personal judgment or decree against owner of premises for amount due to him from original contractor except upon special promise of such owner, in writing, for sufficient consideration, to be answerable for the same. D.C. Code §§ 28-3502, 38-106, 38-121. *Union Wesley A.M.E. Zion Church v. Rider*

Enterprises, Inc., 369 A.2d 608, 1977 D.C. App. LEXIS 418 (1977).

Subcontractor is not entitled to personal judgment against owner of premises for money due him from general contractor, but a personal, new and direct promise by owner to pay for work, though not in writing, is enforceable and not violative of statute of frauds, provided such promise is supported by sufficient consideration, and such agreement is construed to be promise by owner to pay his own debt and not antecedent debt of contractor. Code 1951, § 38-121. *Arthur Snowden Co. v. Meehan*, 118 A.2d 687, 1955 D.C. App. LEXIS 231 (Cr.App. 1955).

Where electrical contractor who initially undertook job at instance of general contractor could have quit the job because of general contractor's default, and he only agreed to continue in consideration of homeowner's personal new and direct agreement to pay for the work, homeowner was not relieved of obligation

to pay, though his promise was merely verbal. Code 1951, §§ 38-107, 38-121. *Thomas v. Ehrmantraut*, 111 A.2d 623, 1955 D.C. App. LEXIS 167 (Cr.App. 1955).

Where principal contract did not cover additional work which owner, through general contractor requested plumbing subcontractor to perform for owner, subcontractor's claim against owner was based on owner's personal promise to pay owner's own debt and not debt of another, and statute authorizing subcontractor to recover amount owed by original contractor from owner who specially promises in writing for consideration to be answerable for such amount was inapplicable to subcontractor's claim against owner, and such claim was not within statute of frauds requiring special promise to answer for debt of another person to be in writing. D.C. Code 1940, §§ 12-302, 38-121. *Jones v. Guice*, 57 A.2d 190, 1948 D.C. App. LEXIS 127 (Cr.App. 1948).

§ 40-303.20. Judgment for deficiency upon sale.

In any suit brought to enforce a lien by virtue of the provisions aforesaid, if the proceeds of the property affected thereby shall be insufficient to satisfy such lien, a personal judgment for the deficiency may be given in favor of the lien or against the owner of the premises or the original contractor, as the case may be, whichever contracted with him for the labor or materials furnished by him, provided such person be a party to the suit and shall have been personally served with process therein.

(Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1258.)

Section references. — This section is referred to in § 40-303.01.

Prior Codifications. — 1981 Ed., § 38-122. 1973 Ed., § 38-122.

CASE NOTES

In general.

If land sought by bill in equity to be subjected to a mechanic's lien is sold under a deed of trust, an award for any deficiency against the owners of the property is properly made under

Code D.C. § 1258 (D.C. Code 1929, T. 25, § 372), if they ordered the labor and material. *Davidson v. E.F. Brooks Co.*, 46 App.D.C. 457, 1917 U.S. App. LEXIS 2569 (1917).

§ 40-303.20a. Authority to promulgate regulations.

(a) The Mayor shall promulgate rules to implement this chapter. The proposed rules shall be transmitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the rules within the 45-day review period, the rules shall be deemed disapproved.

(b) The Mayor shall issue rules to implement the provisions of D.C. Law 16-31, within 180 days of October, 20, 2005.

(Mar. 3, 1901, 31 Stat. 1388, c. 854, § 1258a, as added Mar. 19, 2002, D.C. Law 14-84, § 2(e), 49 DCR 198; Oct. 20, 2005, D.C. Law 16-31, § 2(j), 52 DCR 7195.)

Effect of amendments. — D.C. Law 16-31 rewrote section, which had read as follows: “The Mayor shall promulgate rules to implement §§ 40-301.01 through 40-303.20 in accordance with subchapter I of Chapter 5 of Title 2.”

Legislative history of Law 14-84. — For D.C. Law 14-84, see notes following § 40-301.02.

Legislative history of Law 16-31. — For Law 16-31, see notes following § 40-301.03.

Subchapter III. Wharves and Lots.

§ 40-305.01. Wharves and lots.

Any person who shall furnish materials or labor in filling up any lot or in constructing any wharf thereon, or dredging the channel of the river in front of any wharf, under any contract with the owner, shall be entitled to a lien for the value of such work or materials on said lot and wharf upon the same conditions and to be enforced in the same manner as in the case of work done in the erection of buildings, as provided in § 40-303.08.

(Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1259.)

Prior Codifications. — 1981 Ed., § 38-123. 1973 Ed., § 38-123.

Subchapter IV. Artisan's Lien.

§ 40-307.01. Artisan's lien — Generally.

Any mechanic or artisan who shall make, alter, or repair any article of personal property at the request of the owner shall have a lien thereon for his just and reasonable charges for his work done and materials furnished, and may retain the same in his possession until said charges are paid; but if possession is parted with by his consent such lien shall cease.

(Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1260.)

Section references. — This section is referred to in § 40-307.02.

Prior Codifications. — 1981 Ed., § 38-124. 1973 Ed., § 38-124.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.

In general.

Statute on liens of mechanics or artisans restates common-law lien and provides a means of enforcing it. D.C. Code 1961, §§ 38-124, 38-126. Villacres v. Haddad, 184 A.2d 634, 1962 D.C. App. LEXIS 332 (Cr.App. 1962).

Jurisdiction.

Municipal Court for the District of Columbia

had jurisdiction of action to enforce artisan's lien, notwithstanding that lien was enforced according to due course of proceedings in equity and that Municipal Court had no general equity jurisdiction, since action was essentially one to recover debt that did not exceed \$3,000. D.C. Code 1961, §§ 38-124, 38-126. Villacres v. Haddad, 184 A.2d 634, 1962 D.C. App. LEXIS 332 (Cr.App. 1962).

§ 40-307.02. Enforcement by sale.

If the amount due and for which a lien is given by § 40-307.01 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of \$50, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at the public auction, after giving notice once a week for 3 successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property.

(Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263; Dec. 8, 1970, 84 Stat. 1397, Pub. L. 91-537, § 4(a).)

Prior Codifications. — 1981 Ed., § 38-125. 1973 Ed., § 38-125.

§ 40-307.03. Enforcement by bill in equity.

If the value of the property so subject to lien shall exceed the sum of \$50, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due, and may have execution therefor as at law.

(Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264; Dec. 8, 1970, 84 Stat. 1397, Pub. L. 91-537, § 4(a)(1).)

Prior Codifications. — 1981 Ed., § 38-126. 1973 Ed., § 38-126.

CASE NOTES

In general.

Statute on liens of mechanics or artisans restates common-law lien and provides a

means of enforcing it. D.C. Code 1961, §§ 38-124, 38-126. *Villacres v. Haddad*, 184 A.2d 634, 1962 D.C. App. LEXIS 332 (Cr.App. 1962).

CHAPTER 4. STORAGE LIENS.

Sec.

40-401. Definitions.

40-402. Prohibited acts.

40-403. Lien for rent, labor, or other charges.

Sec.

40-404. Enforcement of lien.

40-405. Personal property vested in occupant.

§ 40-401. Definitions.

For the purposes of this chapter, the term:

(1) “Default” means the failure to perform any obligation or duty set forth in the rental agreement.

(2) “Last known address” means the address provided by the occupant in the rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.

(3) “Leased space” means the individual storage space at the self-service facility which is rented to an occupant pursuant to a rental agreement.

(4) “Occupant” means a person, including an assignee, a sublessee, or successor, entitled to the use of a leased space at a self-service storage facility under a rental agreement.

(5) “Operator” means the owner, operator, lessor, or sublessor of a self-service storage facility, an agent, or any other person authorized to manage the facility. The term “operator” shall not mean a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored.

(6) “Personal property” means movable property, not affixed to land, including goods, wares, merchandise, motor vehicles, watercraft, and household items and furnishings.

(7) “Rental agreement” means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility.

(8) “Self-service storage facility” means any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a “selfstorage” basis.

(Feb. 6, 2004, D.C. Law 15-64, § 2, 50 DCR 9303.)

Legislative history of Law 15-64. — Law 15-64, the “Self Storage Act of 2003”, was introduced in Council and assigned Bill No. 15-105, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 8, 2003,

and October 7, 2003, respectively. Signed by the Mayor on October 24, 2003, it was assigned Act No. 15-182 and transmitted to both Houses of Congress for its review. D.C. Law 15-64 became effective on February 6, 2004.

§ 40-402. Prohibited acts.

(a) An operator shall not knowingly permit a leased space at a self-service storage facility to be used as a residence.

(b) An occupant shall not use a leased space as a residence.

(Feb. 6, 2004, D.C. Law 15-64, § 3, 50 DCR 9303.)

Legislative history of Law 15-64. — For Law 15-64, see notes following § 40-401.

§ 40-403. Lien for rent, labor, or other charges.

(a) The operator shall have a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale, as provided in this chapter.

(b) The rental agreement shall contain a statement, in bold type, advising the occupant:

(1) Of the existence of the lien; and

(2) That property stored in the leased space may be sold to satisfy the lien if the occupant is in default.

(Feb. 6, 2004, D.C. Law 15-64, § 4, 50 DCR 9303.)

Legislative history of Law 15-64. — For Law 15-64, see notes following § 40-401.

§ 40-404. Enforcement of lien.

(a)(1) If the occupant is in default for a period of more than 60 days, the operator may enforce the lien by selling the property stored in the leased space at a public sale.

(2) Proceeds from the sale shall be applied to satisfy the lien, and any surplus shall be disbursed as provided in subsection (e) of this section.

(b) Before conducting a sale under subsection (a) of this section, the operator shall:

(1) Notify the occupant of the default by regular mail at the occupant's last known address;

(2) Send a second notice of default by certified mail, return receipt requested, to the occupant at the occupant's last known address which includes:

(A) A statement that the contents of the occupant's leased space are subject to the operator's lien;

(B) A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of sale, and the date those additional charges shall become due;

(C) A demand for payment of the charges due within a specified time, not less than 14 days after the date that the notice was mailed;

(D) A statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place; and

(E) The name, street address, and telephone number of the operator, or his designated agent, whom the occupant may contact to respond to the notice; and

(3) At least 3 days before the sale, advertise the time, place, and terms of the sale in a newspaper of general circulation in the jurisdiction where the sale is to be held.

(c) At any time before a sale under this section, the occupant may pay the

amount necessary to satisfy the lien and redeem the occupant's personal property.

(d) The sale under this section shall be held at the self-service storage facility where the personal property is stored.

(e) If a sale is held under this section, the operator shall:

(1) Satisfy the lien from the proceeds of the sale; and

(2) Hold the balance, if any, for delivery on demand to the occupant or any other recorded lienholders.

(f) A purchaser in good faith of any personal property sold under this chapter shall take the property free and clear of any rights of:

(1) Persons against whom the lien was valid; and

(2) Other lienholders.

(g) If the operator complies with the provisions of this chapter, the operator's liability:

(1) To the occupant shall be limited to the net proceeds received from the sale of the personal property; and

(2) To other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by that other lien.

(h) If an occupant is in default, the operator may deny the occupant access to the leased space.

(i)(1) Unless otherwise specifically provided, all notices required by this chapter shall be sent by certified mail, return receipt requested.

(2)(A) Notices sent to the operator shall be sent to the self-service storage facility where the occupant's property is stored.

(B) Notices to the occupant shall be sent to the occupant at the occupant's last known address.

(3) Notices shall be deemed delivered when deposited with the United States Postal Service, properly addressed as provided in subsection (b) of this section, with postage prepaid.

(j) The operator shall retain a copy of the second notice of default and the return receipt as provided in subsection (b)(2) of this section for 6 months following the date of the lien sale.

(Feb. 6, 2004, D.C. Law 15-64, § 5, 50 DCR 9303.)

Legislative history of Law 15-64. — For Law 15-64, see notes following § 40-401.

§ 40-405. Personal property vested in occupant.

Unless the rental agreement specifically provides otherwise and until a lien sale under this chapter, the exclusive care, custody, and control of all personal property stored in the leased self-service storage space shall remain vested in the occupant.

(Feb. 6, 2004, D.C. Law 15-64, § 6, 50 DCR 9303.)

Legislative history of Law 15-64. — For Law 15-64, see notes following § 40-401.

TITLE 41. PERSONAL PROPERTY.

Chapter

1. Disposition of Unclaimed Property.
2. Recordation of Instruments.

CHAPTER 1. DISPOSITION OF UNCLAIMED PROPERTY.

Sec.

- 41-101. Findings; purpose.
- 41-102. Definitions.
- 41-103. Property presumed abandoned.
- 41-104. General rules for taking custody of unclaimed intangible property.
- 41-105. Conditions precedent to presumption of abandonment of traveler's checks and money orders.
- 41-106. Bank deposits and funds in financial organizations.
- 41-107. Funds owing under life insurance policies.
- 41-107.01. Property distributable in the course of a demutualization, rehabilitation, or related reorganization of an insurance company.
- 41-108. Deposits and refunds held by utilities.
- 41-109. Stock and other intangible interests in business associations.
- 41-110. Property of business associations and banking or financial organizations held in course of dissolution.
- 41-111. Property held by fiduciaries.
- 41-112. Property held by public officers and agencies.
- 41-113. Employee benefit trust distributions.
- 41-114. Gift certificates and credit memos.
- 41-115. Contents of safe deposit box or other safekeeping repository.
- 41-116. Unpaid wages or other compensation.
- 41-117. Report of property presumed abandoned.
- 41-118. Notice of abandoned property.
- 41-119. Payment or delivery of abandoned property.

Sec.

- 41-120. Custody by the District government; holder relieved from liability; payment of safe deposit box or repository charges; reimbursement of holder paying claim; reclaiming by owner.
- 41-121. Crediting of dividends, interest, or increments to owner's account.
- 41-122. Sale of abandoned property.
- 41-123. Deposit of funds.
- 41-124. Filing of claim with Mayor for abandoned property.
- 41-125. Determination of claims by Mayor.
- 41-126. Claim of state to recover property.
- 41-127. Judicial review of Mayor's decision.
- 41-128. Election to take payment or delivery.
- 41-129. Periods of limitation.
- 41-130. Verified reports; examination of records; subpoenas.
- 41-131. Confidentiality.
- 41-132. Retention of records.
- 41-133. Action to compel delivery of abandoned property.
- 41-134. Reciprocal actions and agreements.
- 41-135. Interest and penalties.
- 41-136. Enforcement.
- 41-137. Agreement to locate property.
- 41-138. Rules and regulations.
- 41-139. Appropriations.
- 41-140. Severability.
- 41-141. Uniformity of application and construction.
- 41-141.01. Unclaimed deposits for excavation work in public space.
- 41-142. Retroactivity of chapter.

§ 41-101. Findings; purpose.

The District of Columbia currently lacks statutory authority to act as custodian for substantial sums of abandoned personal property within its jurisdiction. This chapter is intended to mandate the report and delivery by holders and to authorize the receipt for safekeeping and fiscal growth by the District of Columbia of any and all personal property which is abandoned, without regard either to any maximum length of time for which such property was abandoned or to any statute limiting the right to sue to claim such property.

(Mar. 5, 1981, D.C. Law 3-160, § 101, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-201.

Legislative history of Law 3-160. — Law 3-160 was introduced in Council and assigned Bill No. 3-267, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 14, 1980 and October 28, 1980, respectively. Signed by the Mayor on November 10, 1980, it was assigned Act No. 3-287 and transmitted to both Houses of Congress for its review.

Transfer of Functions. — Pursuant to Reorganization Plan No. 1 of 1992, effective July 7, 1992, all of the duties and functions of the Unclaimed Property Unit in the Department of

Finance and Revenue established under the District of Columbia Uniform Disposition of Unclaimed Property Act § 42-201 et seq., the rules issued pursuant thereto and Mayor's Order 81-82, dated March 27, 1981, 28 DCR 1740, which delegated to the Department of Finance and Revenue the Mayor's authority to administer the act and to issue rules are hereby transferred to the Office of the District of Columbia Controller within the office of Financial Management. The existing Unclaimed Property Unit within the Department of Finance and Revenue is abolished.

CASE NOTES

ANALYSIS

Due process.
In general.
Purpose.

Due process.

Application of Unclaimed Property Act to property as to which limitations period had expired prior to Act's enactment was not deprivation of property without due process of law in violation of Fifth Amendment; holder of property could not show special hardships or oppressive effects. D.C. Code 1981, § 42-201; U.S. Const. Amend. 5. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

In general.

Unclaimed Property Act applies to property as to which limitations period has expired prior to Act's enactment. D.C. Code 1981, § 42-201. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

Under Unclaimed Property Act, bank was required to turn over to District \$780,000 in stale official checks issued by bank which had never been presented for payment, and approximately \$100,000 in miscellaneous government funds belonging to unknown depositors. D.C. Code 1981, §§ 42-201 to 42-242. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

For purposes of determining whether District could recover interest from bank in District's action under Unclaimed Property Act to collect from bank, inter alia, dormant deposits which

had no known owners, when bank refused to deliver under Act, it became indebted to District, which had been substituted by operation of law as custodian of abandoned property; furthermore, debt was liquidated, as official checks and deposits which bank was required to deliver to District were "easily ascertainable." D.C. Code 1981, §§ 15-108, 42-201 to 42-242. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

Under Unclaimed Property Act, District was entitled to interest on funds held by bank which were subject to Act, even though Act does not contain provision authorizing award of prejudgment interest; District's entitlement to interest began on date that abandoned property should have been delivered to mayor. D.C. Code 1981, §§ 15-108, 42-201 to 42-242. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

Purpose.

Although primary purpose of Unclaimed Property Act is to put an end to unearned and fortuitous enrichment of holders of abandoned property and to provide instead for interest of citizens of District and insure that any such escheat would be for public benefit rather than for private gain, Act was also designed to protect interests in rights of true owners of abandoned property and to relieve holders of such property, such as banks, of annoyance and liability incident to caring for it. D.C. Code 1981, §§ 42-201 to 42-242. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

§ 41-102. Definitions.

As used in this chapter, the term:

- (1) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held by the holder.
- (2) "Attorney General" means the chief legal officer of a state.

(3) "Banking organization" means any bank, trust company, savings bank, or a private banker or such other individual or organization defined by the laws of the United States or of the District of Columbia as a bank or banking organization.

(4) "Business association" means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(5) "District" means within the geographical boundaries of the District of Columbia.

(6) "Domicile" means, with respect to businesses:

(A) The state of incorporation in the case of a corporation incorporated under the laws of a state;

(B) The state of the principal place of business in the case of a person not incorporated under the laws of a state; or

(C) The state of the principal place of business in the United States of America in the case of any other person. For purposes of this chapter, the term "state" includes the District of Columbia.

(7) "Employee benefit trust distribution" means any money, life insurance, endowment, or annuity policy or proceeds thereof, securities or other intangible property, and any tangible property that is distributable to a participant, former participant, or the beneficiary, estate, or heirs of a participant, former participant or beneficiary, from a trust or custodial fund established under a plan to provide health and welfare, pension, vacation, severance, retirement benefit, death benefit, stock purchase, profit sharing, employee savings, supplemental unemployment insurance benefits, or similar benefits.

(8) "Financial organization" means any savings and loan association, building and loan association, credit union, or investment company.

(9) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(10) "Holder" means any person wherever organized or domiciled:

(A) In possession of property belonging to another;

(B) Who is a trustee in case of a trust; or

(C) Who is indebted to another on an obligation.

(11) "Intangible personal property" means all choses or things in action.

(12) "Last known address" means a description of the location of the apparent owner for the purpose of the delivery and receipt of mail.

(13) "Life insurance corporation" means any association or corporation including any nonprofit relief association as defined by § 47-2611, transacting the business of insurance on the lives of persons or insurance appertaining thereto, including, without limitation, endowments and annuities.

(14) "Mayor" means the Mayor of the District of Columbia or the Mayor's authorized agent.

(15) "Owner" means a depositor in the case of a deposit; a beneficiary in the case of a trust; a creditor, claimant, or payee in the case of other choses in action; or any person having a legal or equitable interest in property subject to this chapter or his or her legal representative.

(16) "Person" means an individual, business association, government or governmental subdivision or agency, public corporation, public authority, estate, trust, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(16A) "Property" means a fixed and certain interest in or right in an intangible property that is held, issued, or owed in the course of a holder's business, or by a government or governmental entity, and all income or increments therefrom, including that which is referred to as or evidenced by any of the following:

(A) Money, check, draft, deposit, interest, dividend, or income;

(B) Credit balance, customer overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused airline ticket, unused ticket, mineral proceed, or unidentified remittance and electronic fund transfer;

(C) Stock or other evidence of ownership or an interest in a business association;

(D) Bond, debenture, note, or other evidence of indebtedness;

(E) Money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;

(F) An amount due and payable under the terms of an insurance policy, including policies providing life insurance, property and casualty insurance, workers compensation insurance, or health and disability benefits insurance; or

(G) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(16B) "Record" means information that is inscribed on a tangible medium or that is sorted in an electronic or other medium and is retrievable in perceivable form.

(17) "Utility" means any person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

(Mar. 5, 1981, D.C. Law 3-160, § 102, 27 DCR 5150; Mar. 20, 1998, D.C. Law 12-60, § 1701(a), 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 42-202.

Temporary Amendment of Section. — Section 1701(a) of D.C. Law 12-59 rewrote (4); and added (16A) and (16B).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(a) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(a) of the Fiscal Year 1998 Revised Budget Support

Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 12-59. — Law 12-59, the "Fiscal Year 1998 Revised Budget Support Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on

October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1998,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24,

1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Editor’s notes. — “§ 47-2608” was corrected to “§ 47-2611” in paragraph (13).

Uniform Law: This section is based in part upon § 1 of the Uniform Disposition of Unclaimed Property Act (1966 Act).

This section is also based in part upon § 1 of the Uniform Unclaimed Property Act (1981 and 1995 Acts).

§ 41-103. Property presumed abandoned.

(a) All intangible personal property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in the ordinary course of the holder’s business and has remained unclaimed by the owner for more than 3 years after it became payable or distributable is presumed abandoned.

(b) Property presumed abandoned shall include, but is not limited to: Drafts, credit balances, credit checks, uncashed vendor checks, and any other outstanding checks.

(c) Property subject to this chapter shall be deemed payable or distributable notwithstanding the owner’s failure to present any instrument or document evidencing the owner’s right to receive the payment provided therein.

(d) A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the administrator’s burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

(Mar. 5, 1981, D.C. Law 3-160, § 103, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(a), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(b), 44 DCR 7378.)

Section references. — This section is referred to in §§ 41-104 and 41-105.

Prior Codifications. — 1981 Ed., § 42-203.

Temporary Amendment of Section. — Section 1701(b) of D.C. Law 12-59 substituted “3 years” for “5 years” in (a); and added (d).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(b) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(b) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — Law 9-64, the “Uniform Disposition of Unclaimed Property Act of 1980 Clarifying Temporary Amendment Act of 1991,” was introduced in Council and assigned Bill No. 9-322. The Bill was adopted on first and second readings on October 1, 1991, and November 5, 1991, respectively. Signed by the Mayor on November 25, 1991, it was assigned Act No. 9-107 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-161. — Law 9-161, the “Uniform Disposition of Unclaimed Property Act of 1980 Dormancy and Clarifying Amendment Act of 1992,” was introduced in

Council and assigned Bill No. 9-333, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-255 and transmitted to both Houses of Congress for its review. D.C. Law 9-161 became effective on September 29, 1992.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based in part upon § 9 of the Uniform Disposition of Unclaimed Property Act (1966 Act).

This section is also based upon § 2 of the Uniform Unclaimed Property Act (1981 and 1995 Acts), and upon § 6 of the 1995 Act.

CASE NOTES

In general.

For purposes of determining whether District could recover interest from bank in District's action under Unclaimed Property Act to collect from bank, inter alia, dormant deposits which had no known owners, when bank refused to deliver under Act, it became indebted to District, which had been substituted by operation

of law as custodian of abandoned property; furthermore, debt was liquidated, as official checks and deposits which bank was required to deliver to District were "easily ascertainable." D.C. Code 1981, §§ 15-108, 42-201 to 42-242. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

§ 41-104. General rules for taking custody of unclaimed intangible property.

Unless otherwise provided by statute of the District of Columbia, intangible personal property is subject to a presumption of abandonment under this chapter if the conditions leading to a presumption of abandonment as described in §§ 41-103 and 41-105 through 41-116 are satisfied, and any one of the following conditions is met:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in the District;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the property was owned or payable to a person whose last known address is in the District;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(A) The last known address of the person entitled to the property is in the District; or

(B) The holder is either domiciled in the District or is the District government and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide an escheat or abandoned property law applicable to the property in question and the holder is:

(A) Domiciled in the District; or

(B) The District government;

(5) The last known address of the apparent owner, as shown on the record of the holder, is in a foreign nation and the holder is:

(A) Domiciled in the District; or

(B) The District government;

(6)(A) The transaction out of which the property arose occurred in the District;

(B)(i) The identity of the person entitled to the property is unknown;

(ii) The last known address of the apparent owner or other person entitled to the property is unknown; or

(iii) The last known address of the apparent owner is in a state that does not provide an escheat or unclaimed property law applicable to the property; and

(C) The holder is domiciled in a state that does not provide an escheat or abandoned property law applicable to the property; or

(7) The holder is domiciled in the District and has not previously paid or delivered the property to a state.

(Mar. 5, 1981, D.C. Law 3-160, § 104, 27 DCR 5150; June 4, 1982, D.C. Law 4-111, § 3(a), 29 DCR 1684; Sept. 29, 1992, D.C. Law 9-161, § 2(b), 39 DCR 5696; Apr. 9, 1997, D.C. Law 11-255, § 44(a), 44 DCR 1271.)

Section references. — This section is referred to in §§ 41-105, 41-109, and 41-126.

Prior Codifications. — 1981 Ed., § 42-204.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 4-111. — Law 4-111 was introduced in Council and assigned Bill No. 4-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 9, 1982 and March 23, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-174 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Unclaimed Property Act (1981 Act).

CASE NOTES

In general.

Genuine issue of material fact, precluding summary judgment for District on its claim under Unclaimed Property Act against bank for monies in dormant accounts belonging to residents of states with which District had no reciprocity agreements for mutual exchange of

abandoned property, existed as to whether those states had escheat or abandoned property laws applicable to property in question. D.C. Code 1981, § 42-204(3). *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

§ 41-105. Conditions precedent to presumption of abandonment of traveler's checks and money orders.

Any sum payable on a money order, traveler's check, or similar written instrument (other than a 3rd party bank check) on which a banking or financial organization or a business association is directly liable is presumed abandoned if the appropriate conditions leading to a presumption of abandonment as described in §§ 41-103 and 41-104 are satisfied and:

(1) The books and records of the banking or financial organization or business association show that the money order, traveler's check, or similar written instrument was purchased in the District;

(2) The banking or financial organization or the business association has its principal place of business in the District and the books and records of the business association do not show the state in which the money order, traveler's check, or similar written instrument was purchased; or

(3) The banking or financial organization or the business association has its principal place of business in the District, the books and records of the banking or financial organization or business association show the state in which the money order, traveler's check, or similar written instrument was purchased and the state of purchase does not provide an escheat or abandoned property law applicable to the delivery of the sum payable on such instrument to the state.

(Mar. 5, 1981, D.C. Law 3-160, § 105, 27 DCR 5150.)

Section references. — This section is referred to in §§ 41-104, 41-118, 41-119 and 41-126.

Prior Codifications. — 1981 Ed., § 42-205.

Legislative history of Law 3-160. — For

legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-106. Bank deposits and funds in financial organizations.

(a) Any demand, savings, or matured time deposit with a banking or financial organization, including deposits that are automatically renewable, and any funds paid toward the purchase of shares, a mutual investment certificate, or any other interest in a financial organization is presumed abandoned unless the owner within 3 years has:

(1) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(2) Communicated in writing with the banking or financial organization concerning the property;

(3) Otherwise indicated an interest in the property as evidenced by a memorandum on file prepared by an employee of the banking or financial organization;

(4) Owned other property held by the banking or financial organization for which paragraph (1), (2), or (3) of this subsection are applicable; provided, that the banking or financial organization communicates in writing with regard to the property that would otherwise be presumed abandoned under this subsection to the owner at the address to which communications regarding the other property are regularly sent; or

(5) Had another relationship with the banking or financial organization concerning which the owner has:

(A) Communicated in writing with the banking or financial organization; or

(B) Otherwise indicated an interest as evidenced by a memorandum on file prepared by an employee of the banking or financial organization; provided, that the banking or financial organization communicates in writing with regard to the property that would otherwise be abandoned under this subsection to the owner at the address to which communications regarding the other relationship are regularly sent.

(b) For purposes of subsection (a) of this section, the term "property" includes any interest or dividends thereon.

(c) Any sum payable on a traveler's check issued by a banking or financial institution or a business association in the District that has been outstanding for more than 15 years after its issuance is presumed abandoned if the owner, for more than 15 years, has not communicated in writing with the banking or financial organization or business association concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization or business association.

(c-1) Any sum payable on a money order issued by a banking or financial institution or a business association in the District that has been outstanding for more than 7 years after its issuance is presumed abandoned if the owner, for more than 7 years, has not communicated in writing with the banking or financial organization or business association concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization or business association.

(d) A sum payable on any other written instrument on which a banking or financial organization or business association in the District is directly liable, including, but not limited to, certified checks, or drafts, that has been outstanding for more than 3 years after it was payable, or after its issuance if payable on demand, is presumed abandoned unless the owner has, within 3 years, communicated in writing with the banking or financial organization or business association concerning it or otherwise indicated an interest as evidenced by a memorandum on file prepared by an employee of the banking or financial organization or business association.

(e) No holder may impose with respect to property described in subsection (a) of this section any charges due to dormancy or inactivity, or cease payment of interest unless:

(1) There is a valid, enforceable, written contract between the holder and the owner of the property pursuant to which the holder may impose such charges or cease payment of interest;

(2) The holder regularly imposes such charges or ceases accrual or payment of interest and does not regularly reverse or otherwise cancel such charges or retroactively pay interest with respect to such property; and

(3) For property in excess of \$10, the holder, no more than 3 months prior to the initial imposition of such charges or cessation of interest, gives written notice to the owner of the amount of such charges at the last known address of the owner that such charges will be imposed or that interest will cease; except, that the notice provided in this section need not be given with respect to charges imposed or accrued or interest ceased prior to January 1, 1980.

(4) The amount of the deduction is limited to an amount that is not unconscionable.

(f) No holder shall deduct from the amount of any draft, registered check, money order, certified check, traveler's check, cashier's check, treasurer's check, or any similar written instrument any charges imposed by reason of the failure to present such items for encashment unless:

(1) There is a valid, enforceable, written contract between the holder and the owner of the property pursuant to which the holder may impose such charges; and

(2) The holder regularly imposes such charges and does not regularly reverse or otherwise cancel such charges with respect to such property.

(g) Notwithstanding any provision to the contrary in this section, in the event that any type of property subject to this section is an asset of an Individual Retirement Account established pursuant to the Employee Retirement Security Act of 1974 (26 U.S.C. § 408 (a)) or of a Keogh Plan established pursuant to the Internal Revenue Code of 1954 (26 U.S.C. § 401 (a)), respectively, it shall not be deemed matured or otherwise reportable if, under the terms of such plan, distribution of all or part of the property would not then be mandatory.

(h) Any property automatically renewable according to its terms that is subject to subsection (a) of this section shall be deemed matured for purposes of this section upon the expiration of its initial term. If at the time provided for delivery in § 41-119, a penalty or forfeiture in the payment of interest would result from the delivery of any such property, the time for delivery shall be extended until such time as no penalty for forfeiture would result.

(Mar. 5, 1981, D.C. Law 3-160, § 106, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(c), (d), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(c), 44 DCR 7378; May 23, 2000, D.C. Law 13-113, § 2, 47 DCR 1989.)

Section references. — This section is referred to in § 41-104.

Prior Codifications. — 1981 Ed., § 42-206.

Effect of amendments. — D.C. Law 13-113 added subsec. (c-1), and in subsec. (d) substituted "or drafts" for "drafts, or money orders".

Temporary Amendment of Section. — Section 1701(c) of D.C. Law 12-59 substituted "3 years" for "5 years" in the introductory paragraph of (a) and twice in (d); and added (e)(4).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(c) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(c) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For

legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 13-113. — Law 13-113, the "District of Columbia Uniform Disposition of Unclaimed Property Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-264, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on January 4, 2000, and February 1, 2000, respectively. Signed by the Mayor on February 18, 2000, it was assigned Act No. 13-266 and

transmitted to both Houses of Congress for its review. D.C. Law 13-113 became effective on May 23, 2000.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Unclaimed Property Act (1981 Act).

CASE NOTES

ANALYSIS

In general.

Summary judgment.

In general.

Under portion of Unclaimed Property Act which creates general proscription against service charges, but provides for exception to general rule if three conditions are met, party seeking to impose service charge must carry burden of persuasion with respect to those three conditions. D.C. Code 1981, § 42-206(e). *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

In District's action under Unclaimed Property Act to recover service charges imposed by bank on dormant accounts, where District accepted as undisputed that bank's signature cards carried provision informing customers that bank was authorized to impose service charges on small inactive accounts, that signature cards informed customers that reasonable charge would be imposed on accounts with

balances of less than \$50 which had been inactive for three years or more and that signature cards used by bank conformed with generally accepted banking practices for drafting of signature cards, bank met its burden of proving valid and enforceable contract between holder and owner under provision of statute providing that service charges may be imposed if three conditions are met. D.C. Code 1981, § 42-206(e)(1). *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

Summary judgment.

Genuine issue of material fact, precluding summary judgment for District on its claim under Unclaimed Property Act to collect service charges imposed by bank on dormant accounts, existed as to whether any particular account against which service charge was imposed contained more than \$10. D.C. Code 1981, § 42-206(e)(3). *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

§ 41-107. Funds owing under life insurance policies.

(a) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than 3 years after the funds became due and payable as established from the records of the insurance company holding or owing the funds.

(b) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(c) For purposes of this section, a life or endowment insurance policy or annuity contract not mature by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(1) The company knows that the insured or annuitant has died; or

(2)(A) The insured has attained, or would have attained if the insured were living, the limiting age under the mortality table on which the reserve is based;

(B) The policy was in force at the time the insured attained, or would have attained, the limiting age under the mortality table on which the reserve is based; and

(C) Neither the insured nor any other person appearing to have an interest in the policy within the preceding 5 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(d) For the purposes of this section, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being mature or terminated under subsection (a) of this section if the insured has died or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds of the policy before the depletion of the cash surrender value of the policy by the application of those provisions.

(Mar. 5, 1981, D.C. Law 3-160, § 107, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(e), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(d), 44 DCR 7378.)

Section references. — This section is referred to in § 41-104.

Prior Codifications. — 1981 Ed., § 42-207.

Temporary Amendment of Section. — Section 1701(d) of D.C. Law 12-59 substituted “3 years” for “5 years” in (a).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(d) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(d) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-107.01. Property distributable in the course of a demutualization, rehabilitation, or related reorganization of an insurance company.

(a) Property distributable in the course of demutualization, rehabilitation or related reorganization of an insurance company, shall be deemed abandoned 2 years after the date of the demutualization if, at the time of the demutualization:

(1)(A) The last known address of the owner on the books and records of the holder is known to be incorrect;

(B) The distribution or statements are returned by the post office as undeliverable; or

(C) Funds distributed in the course of the demutualization, rehabilitation, or related reorganization remain uncashed; and

(2) The owner has not:

(A) Communicated in writing with the holder or its agent regarding the property; or

(B) Otherwise communicated with the holder regarding the property as evidenced by a memorandum or other record on file with the holder or its agent.

(b) Property distributable in the course of a demutualization, rehabilitation, or related reorganization of a mutual insurance company that is not subject to subsection (a) of this section shall be reportable as otherwise provided by this chapter.

(Mar. 5, 1981, D.C. Law 3-160, § 107a, as added Dec. 7, 2004, D.C. Law 15-205, § 1052(a), 51 DCR 8441.)

Emergency legislation. — For temporary (90 day) addition, see § 1052(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 1052(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Short title. — Short title of subtitle F of title I of Law 15-205: Section 1051 of D.C. Law 15-205 provided that subtitle F of title I of the act may be cited as the Unclaimed Property Demutualization of Proceeds Amendment Act of 2004.

§ 41-108. Deposits and refunds held by utilities.

The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit, including any interest thereon, made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than one year after the termination of the services for which the deposit or advance payment was made; and

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than one year after it became payable in accordance with the final determination or order providing for the refund, regardless of whether the final determination or order requires any person entitled to a refund to make a claim.

(Mar. 5, 1981, D.C. Law 3-160, § 108, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(f), 39 DCR 5696; Apr. 9, 1997, D.C. Law 11-255, § 44(b), 44 DCR 1271; Mar. 20, 1998, D.C. Law 12-60, § 1701(e), 44 DCR 7378.)

Section references. — This section is referred to in § 41-104.

Prior Codifications. — 1981 Ed., § 42-208.

Temporary Amendment of Section. — Section 1701(e) of D.C. Law 12-59 substituted “1 year” for “5 years” throughout the section.

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(e) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(e) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 41-104.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based in part upon § 4 of the Uniform Disposition of Unclaimed Property Act (1966 Act).

This section is also based upon § 8 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-109. Stock and other intangible interests in business associations.

(a) Subject to § 41-104, any stock, other certificate of ownership, or other intangible ownership interest, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to the owner, is presumed abandoned if the owner has not claimed it, corresponded in writing with the business association concerning it, or otherwise communicated with the association concerning it, as evidenced by a memorandum or other record on file with the association within 3 years after the date prescribed for payment or delivery.

(b) Subject to § 41-104, any intangible interest in a business association, as evidenced by the stock records or membership records of the association, is presumed abandoned if:

(1) The interest in the association is owned by a person who for more than 3 years has not:

(A) Claimed a dividend, profit, distribution, interest, payment on principal, or other sum held or owing by the association for or to the person; or

(B) Corresponded in writing with the association or otherwise communicated with the association, as evidenced by a memorandum or other record on file with the association;

(2) The association does not know the location of the owner at the end of the 3-year period; and

(3) With respect to the intangible interest in a business association, the business association shall be deemed the holder.

(4) The return of official shareholder notifications or communications by the postal service as undeliverable shall be evidence that the association does not know the location of the owner.

(c) Subject to § 41-104, any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to the owner, is presumed abandoned at the time the stock, other certificate of ownership, or other intangible ownership interest to which it attaches is presumed abandoned.

(d) This chapter does not apply to any stock or other intangible ownership interest enrolled in a plan that provided for the automatic reinvestment of dividends, distribution, or other sums payable as a result of the interest unless one or more of the following applies:

(1) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not, within 3 years, communicated in any manner described in subsection (a) of this section.

(2) Three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or by the postal service as undeliverable, and the owner has not within those 3 years communicated in any manner described in subsection (a) of this section. The 3-year period from the return of official shareholder notifications or communications shall commence from the earlier of the return of the second such mailing or the time the holder discontinues mailings to the shareholder.

(Mar. 5, 1981, D.C. Law 3-160, § 109, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(g), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(f), 44 DCR 7378.)

Section references. — This section is referred to in §§ 41-104 and 41-119.

Prior Codifications. — 1981 Ed., § 42-209.

Temporary Amendment of Section. — Section 1701(f) of D.C. Law 12-59 substituted “3 years” for “5 years” in (a) and (b)(1); substituted “3-year” for “5-years” in (b)(2); and added (b)(4) and (d).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(f) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(f) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor’s notes. — Uniform Law: This section is based upon § 10 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-110. Property of business associations and banking or financial organizations held in course of dissolution.

All intangible personal property distributable in the course of a voluntary or involuntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in the District, that is unclaimed by the owner within 60 days after the date of final distribution, is presumed abandoned.

(Mar. 5, 1981, D.C. Law 3-160, § 110, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(h), 39 DCR 5696.)

Section references. — This section is referred to in § 41-104.

Prior Codifications. — 1981 Ed., § 42-210.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Editor's notes. — Uniform Law: This section is based upon § 11 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-111. Property held by fiduciaries.

(a) All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person, is presumed abandoned unless the owner, within 3 years after it becomes payable or distributable, has increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary.

(b) For the purpose of this section, if a person holds property as an agent for a business association, the agent is deemed to hold the property in a fiduciary capacity for that business association unless the agreement between the agent and the business association provides otherwise.

(c) For the purposes of this chapter, if a person is deemed to hold property in a fiduciary capacity for a business association alone, that person is the holder of the property only insofar as the interest of the business association in the property is concerned and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

(Mar. 5, 1981, D.C. Law 3-160, § 111, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(i), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(g), 44 DCR 7378.)

Section references. — This section is referred to in § 41-130.

Prior Codifications. — 1981 Ed., § 42-211.

Temporary Amendment of Section. — Section 1701(g) of D.C. Law 12-59 substituted "3 years" for "5 years" in (a).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(g) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(g) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based upon § 12 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-112. Property held by public officers and agencies.

Except for property held by the Property Clerk of the Metropolitan Police Department, as provided in subchapter X of Chapter 1 of Title 5, all intangible personal property held for the owner by any public corporation, public authority, or public officer of the District government, that has remained unclaimed by the owner for more than one year, is presumed abandoned.

(Mar. 5, 1981, D.C. Law 3-160, § 112, 27 DCR 5150; Mar. 20, 1998, D.C. Law 12-60, § 1701(h), 44 DCR 7378.)

Section references. — This section is referred to in § 41-104.

Prior Codifications. — 1981 Ed., § 42-212.

Temporary Amendment of Section. — Section 1701(h) of D.C. Law 12-59 substituted “1 year” for “2 years.”

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(h) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(h) of the Fiscal Year 1998 Revised Budget Support

Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based upon § 13 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-113. Employee benefit trust distributions.

All employee benefit trust distributions and any income or other increment thereon is presumed abandoned if the owner within 3 years after it becomes payable or distributable has not accepted the distribution, corresponded in writing concerning the distribution, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary of the trust or custodial fund or administrator of the plan under which the trust or fund is established.

(Mar. 5, 1981, D.C. Law 3-160, § 113, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(j), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(i), 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 42-213.

Temporary Amendment of Section. — Section 1701(i) of D.C. Law 12-59 substituted “3 years” for “5 years.”

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(i) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(i) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

§ 41-114. Gift certificates and credit memos.

(a) Gift certificates and credit memos held or owing in the ordinary course of the holder's business that have remained unclaimed by the owner for more than 5 years after becoming payable or distributable are presumed abandoned.

(b) If a gift certificate or credit memo is redeemable for cash or merchandise, its value for purposes of this chapter shall be the amount paid by the purchaser.

(Mar. 5, 1981, D.C. Law 3-160, § 114, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(k), 39 DCR 5696.)

Prior Codifications. — 1981 Ed., § 42-214.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Editor's notes. — Uniform Law: This section is based upon § 14 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-115. Contents of safe deposit box or other safekeeping repository.

Except as provided in § 30-103, all personal property, tangible or intangible, held in a safe deposit box or any other safekeeping repository in the District by any person in the ordinary course of business, which is unclaimed by the owner for 3 years or more from the date on which the lease or rental period on the box or other repository expired is presumed abandoned.

(Mar. 5, 1981, D.C. Law 3-160, § 115, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(l), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(j), 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 42-215.

Temporary Amendment of Section. — Section 1701(j) of D.C. Law 12-59 substituted "3 years" for "5 years."

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(j) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(j) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For

legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based upon § 16 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-116. Unpaid wages or other compensation.

Wages or other compensation for personal services held or owing in the ordinary course of the holder's business that have remained unclaimed by the

owner for more than one year after the compensation becomes payable or distributable are presumed abandoned.

(Mar. 5, 1981, D.C. Law 3-160, § 116, 27 DCR 5150; Mar. 20, 1998, D.C. Law 12-60, § 1701(k), 44 DCR 7378.)

Section references. — This section is referred to in § 41-104.

Prior Codifications. — 1981 Ed., § 42-216.

Temporary Amendment of Section. — Section 1701(k) of D.C. Law 12-59 rewrote the section.

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(k) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(k)

of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

§ 41-117. Report of property presumed abandoned.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the Mayor with respect to the property as provided in this section.

(b) The report must be verified and shall include:

(1) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and the beneficiary and his or her last known address according to the life insurance corporation's records;

(2) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and may be inspected by the Mayor, in which case the report must set forth any amounts owing to the holder as shown by § 41-118;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$50 shall be reported in the aggregate upon the aggregation exceeding \$50;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property;

(5) Other information which the Mayor prescribes by rule as necessary for the administration of this chapter; and

(6) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any and if known, of each person appearing from the records of the holder to be the owner of any property of the value of \$50 or more presumed abandoned under this chapter.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or the present holder has changed his or her name while holding the property, the present

holder shall file with his or her report all known names and addresses of each previous holder of the property.

(d) The report as of the prior June 30th must be filed before November 1st of each year, but a report with respect to a life insurance company made pursuant to § 41-107 and a report of unclaimed insurance company demutualization proceeds made pursuant to § 41-107.01 shall be filed before May 1st of each year as of the prior December 31; provided, that the initial report for insurance company demutualization proceeds made pursuant to § 41-107.01 shall be filed not later than October 1 as of the prior December 31. The Mayor may postpone the reporting date upon written request by any person required to file a report. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminated the accrual or additional interest on the amount paid.

(e)(1) The holder of property presumed abandoned shall send written notice to the owner, not more than 120 days or less than 60 days before filing the report, stating that the holder is in possession of property subject to this chapter, if:

(A) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate; and

(B) The value of the property is \$50 or more.

(2) In calendar year 1998, a report concerning all property presumed to be abandoned as of October 21, 1997, must be filed no later than January 2, 1998.

(f) Verification, if made by a partnership, must be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(Mar. 5, 1981, D.C. Law 3-160, § 117, 27 DCR 5150; June 11, 1981, D.C. Law 4-10, § 2(a), 28 DCR 1889; Sept. 29, 1992, D.C. Law 9-161, § 2(m), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(l), 44 DCR 7378; Dec. 7, 2004, D.C. Law 15-205, § 1052(b), 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-354, § 58, 52 DCR 2638.)

Section references. — This section is referred to in §§ 41-118, 41-119, 41-128, 41-132 and 41-137.

Prior Codifications. — 1981 Ed., § 42-217.

Effect of amendments. — D.C. Law 15-205 rewrote subsec (d) which had read as follows: “(d) The report as of the prior June 30th must be filed before November 1st of each year, but a report with respect to a life insurance company must be filed before May 1st of each year as of December 31 next preceding. The Mayor may postpone the reporting date upon written request by any person required to file a report. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminated the accrual or additional interest on the amount paid.”

D.C. Law 15-354, in subsec. (d), substituted

“shall be filed not later than October 1” for “shall be filed later than October 1”.

Temporary Amendment of Section. — Section 1701(l) of D.C. Law 12-59 rewrote (d) and (e).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 15-233, in subsec. (d), substituted “filed no later than October 1” for “filed later than October 1”.

Section 5(b) of D.C. Law 15-233 provided that the act shall expire after 225 days of its having taken effect.

Section 7 of D.C. Law 16-102, in par. (d), substituted “filed no later than October 1” for “filed later than October 1”.

Section 11(b) of D.C. Law 16-102 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(l) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(l) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary (90 day) amendment of section, see § 1052(b) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2 of Unclaimed Property Demutualization Proceeds Technical Correction Emergency Amendment Act of 2004 (D.C. Act 15-534, October 4, 2004, 51 DCR 9632).

For temporary (90 day) amendment of section, see § 1052(b) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2 of Unclaimed Property Demutualization Proceeds Technical Correction Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-11, January 19, 2005, 52 DCR 2943).

For temporary (90 day) amendment of section, see § 7 of Finance and Revenue Technical Amendments Emergency Amendment Act of 2006 (D.C. Act 16-260, January 26, 2006, 53 DCR 780).

For temporary (90 day) amendment of section, see § 7 of Finance and Revenue Technical Amendments Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-361, April 26, 2006, 53 DCR 3619).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 4-10. — Law 4-10 was introduced in Council and assigned Bill No. 4-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 24, 1981,

and April 7, 1981, respectively. Signed by the Mayor on April 20, 1981, it was assigned Act No. 4-22 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 41-107.01

Legislative history of Law 15-233. — Law 15-233, the “Unclaimed Property Demutualization Proceeds Technical Correction Amendment Temporary Act of 2004”, was introduced in Council and assigned Bill No. 15-996, and was retained by the Council. The Bill was adopted on first and second readings on September 21, 2004, and October 5, 2004, respectively. Signed by the Mayor on November 1, 2004, it was assigned Act No. 15-573 and transmitted to both Houses of Congress for its review. D.C. Law 15-233 became effective on March 16, 2005.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004”, was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Editor's notes. — Uniform Law: This section is based upon § 11 of the Uniform Disposition of Unclaimed Property Act (1966 Act).

This section is also based upon § 17 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-118. Notice of abandoned property.

(a) Within 120 days from the filing of the report required by § 41-117, the Mayor shall cause notice to be published at least once each week for 2 consecutive weeks in a newspaper of general circulation in the District.

(b) The published notice shall be entitled “Notice of Names of Persons Appearing To Be Owners of Abandoned Property” and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice as specified in this chapter;

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any

persons possessing an interest in the property by addressing an inquiry to the Mayor; and

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the Mayor.

(c) The Mayor is not required to publish notice of any item of less than \$50 in value unless the Mayor deems such publication to be in the public interest.

(d) Within 120 days from the receipt of the report required by § 41-117, the Mayor shall mail a notice to each person having an address listed who appears to be entitled to property of a value of \$50 or more presumed abandoned under this chapter.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the Mayor, property is being held to which the addressee appears entitled;

(2) The name and address of the person holding the property and any necessary information regarding the changes of name and address of the holder; and

(3) A statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the Mayor and a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the Mayor.

(f) This section is not applicable to sums payable on traveler's checks or money orders and similar written instruments that are presumed abandoned under § 41-105.

(g) With respect to property reported and delivered on or before January 2, 1998, pursuant to § 41-117(e), the Mayor shall cause the newspaper notice required by subsection (a) of this section to be completed no later than May 1, 1998.

(Mar. 5, 1981, D.C. Law 3-160, § 118, 27 DCR 5150; June 11, 1981, D.C. Law 4-10, § 2(b), 28 DCR 1989; Sept. 29, 1992, D.C. Law 9-161, § 2(n), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(m), 44 DCR 7378.)

Section references. — This section is referred to in §§ 41-117 and 41-131.

Prior Codifications. — 1981 Ed., § 42-218.

Temporary Amendment of Section. — Section 1701(m) of D.C. Law 12-59 rewrote (b)(3), (e)(3), and (g).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(m) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(m) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For

legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 4-10. — For legislative history of D.C. Law 4-10, see Historical and Statutory Notes following § 41-117.

Legislative history of Law 9-64. — For legislative history of D.C. Law 9-64, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based upon § 12 of the Uniform Disposition of Unclaimed Property Act (1966 Act).

This section is also based upon § 18 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-119. Payment or delivery of abandoned property.

(a) Except for property held in a safe deposit box or other safekeeping depository, upon filing a report required by § 41-117, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Mayor the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. Tangible property held in a safe deposit box or other safekeeping depository shall not be delivered to the Mayor until 120 days after filing the report required in § 41-117.

(b) Repealed.

(c) Repealed.

(d) The holder of an interest under § 41-109 shall deliver a duplicate certificate or other evidence of ownership to the Mayor if the holder does not issue certificates of ownership. Upon delivery of a duplicate certificate to the Mayor, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provisions of § 41-120 to every person, including any person acquiring the original certificate or the duplicate of the certificate delivered to the Mayor, for any losses or damages resulting to any person by the issuance and delivery to the Mayor of the duplicate certificate.

(Mar. 5, 1981, D.C. Law 3-160, § 119, 27 DCR 5150; June 11, 1981, D.C. Law 4-10, § 2(c), 28 DCR 1989; Sept. 29, 1992, D.C. Law 9-161, § 2(o), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(n), 44 DCR 7378.)

Section references. — This section is referred to in §§ 41-106 and 41-137.

Prior Codifications. — 1981 Ed., § 42-219.

Temporary Amendment of Section. — Section 1701(n) of D.C. Law 12-59 rewrote (a); and repealed (b) and (c).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(n) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(n) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 4-10. — For legislative history of D.C. Law 4-10, see Historical and Statutory Notes following § 41-117.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based upon § 19 of the Uniform Unclaimed Property Act (1981 Act).

CASE NOTES

In general.

Under Unclaimed Property Act, bank was

required to turn over to District \$780,000 in stale official checks issued by bank which had

never been presented for payment, and approximately \$100,000 in miscellaneous government funds belonging to unknown depositors. D.C.

Code 1981, §§ 42-201 to 42-242. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

§ 41-120. Custody by the District government; holder relieved from liability; payment of safe deposit box or repository charges; reimbursement of holder paying claim; reclaiming by owner.

(a) Upon the payment or delivery of property to the Mayor, the District government assumes custody and responsibility for the safekeeping of the property. Any person who pays or delivers property to the Mayor in good faith under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim then existing or which may arise thereafter or be made in respect to the property. Property removed from a safe deposit box or other safekeeping repository may be received by the Mayor subject to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges and the actual cost of the opening thereof, which rent and charges must be paid out of the proceeds remaining after the Mayor has deducted therefrom his or her selling costs.

(b) Any holder who has paid money to the Mayor pursuant to this chapter may make payment to any person appearing to the holder to be entitled thereto, and, upon filing proof of payment and proof that the payee was entitled thereto, the Mayor shall reimburse the holder for the payment without deduction of any fee or other charges. If reimbursement is sought for a payment made on a negotiable instrument including, but not limited to, a traveler's check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented to the holder and that payment was made to a person who appeared to the holder to be entitled to payment.

(c) Any holder who has delivered property to the Mayor pursuant to this chapter may reclaim the property without payment of any fee or other charges upon filing proof that the owner has claimed the property from the holder. The Mayor, in the Mayor's discretion, may accept an affidavit of the holder stating the facts that entitle the holder to reimbursement under this subsection as sufficient proof.

(Mar. 5, 1981, D.C. Law 3-160, § 120, 27 DCR 5150.)

Section references. — This section is referred to in § 41-119.

Prior Codifications. — 1981 Ed., § 42-220.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 20 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-121. Crediting of dividends, interest, or increments to owner's account.

Whenever property other than money is paid or delivered to the Mayor

under this chapter, any dividends, interest, or other increments realized or accruing, on the property at or before liquidation or conversion thereof into money, shall be credited, upon receipt, to the owner's account by the Mayor.

(Mar. 5, 1981, D.C. Law 3-160, § 121, 27 DCR 5150.)

Section references. — This section is referred to in § 41-125.

Prior Codifications. — 1981 Ed., § 42-221.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 21 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-122. Sale of abandoned property.

(a) All abandoned property other than money delivered to the Mayor under this chapter which remains unclaimed 1 year after the delivery to the Mayor may be sold to the highest bidder at public sale. The Mayor may decline the highest bid and re-offer the property for sale if the Mayor considers the price bid insufficient. The Mayor need not offer any property for sale if, in the Mayor's opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under subsection (a) of this section shall be preceded by at least a single publication of notice thereof, at least 3 weeks in advance of sale, in a newspaper of general circulation in the District.

(c) The purchaser at any sale conducted by the Mayor pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder and of all persons claiming through or under the owner or prior holder. The Mayor shall execute all documents necessary to complete the transfer of title.

(d) Unless the Mayor considers it to be in the best interest of the District to do otherwise, all securities abandoned under § 41-109 must be held for at least 3 years before the Mayor may sell them. If the Mayor sells any securities delivered pursuant to § 41-109 before the expiration of the 3-year period, any person making a claim pursuant to this chapter before the end of 3 years is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for fees pursuant to § 41-123(c). A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the Mayor by the holder, if they still remain in the hands of the Mayor, or the proceeds received from the sale, less any amounts deducted pursuant to § 41-123(c); but no person has any claim under this chapter against the District, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the Mayor.

(Mar. 5, 1981, D.C. Law 3-160, § 122, 27 DCR 5150; Mar. 20, 1998, D.C. Law 12-60, § 1701(o), 44 DCR 7378.)

Section references. — This section is referred to in § 41-123.

Prior Codifications. — 1981 Ed., § 42-222.

Temporary Amendment of Section. — Section 1701(o) of D.C. Law 12-59 in (a), inserted "which remains unclaimed 1 year after

the delivery to the Mayor" in the first sentence; and added (d).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(o) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(o) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based upon § 22 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-123. Deposit of funds.

(a) During the first 2 years after the effective date of this chapter, no less than 50% of all property received under this chapter, including the proceeds from the sale of abandoned property under § 41-122, shall be deposited by the Mayor in a separate trust fund or kept for safekeeping with a holder which is a bank or trust company in order to make prompt payment of claims duly allowed by the Mayor as provided by this section. The remainder percentage of funds received and any income or increment to the funds deposited in the trust fund accruing during such 2 years may be deposited in the General Fund of the District government.

(b)(1) All funds received or kept under this chapter after the 2 year period described in subsection (a) of this section, including the proceeds from the sale of abandoned property under § 41-122, shall be deposited by the Mayor in the General Fund of the District government, except that the Mayor shall retain in a separate trust fund an amount not less than \$100,000 in order to make prompt payment of claims duly allowed by the Mayor as provided by this chapter. Any monies unexpended at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.

(2) Before making the deposit the Mayor shall record at least the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and beneficiary and, with respect to each policy or contract listed in the report of a life insurance corporation, the policy or contract number, and the name of the corporation.

(3) The record shall be available for public inspection during regular business hours. The Mayor of the District of Columbia is authorized to establish and collect reasonable fees for services rendered by the Department of Finance and Revenue for the searching and reproduction of records and other services as may, in the judgment of the Mayor, be necessary to defray the cost of providing services.

(c) Before making any deposit to the credit of the General Fund of the District government, the Mayor may deduct:

(1) Any costs in connection with the sale of abandoned property, or with the disposition by other means of abandoned property under § 41-122;

(2) Any costs of mailing and publication in connection with any abandoned property;

(3) Reasonable service charges; and

(4) The costs incurred in examining records of holders of abandoned property and collecting such property from such holders.

(Mar. 5, 1981, D.C. Law 3-160, § 123, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(p), 39 DCR 5696; Sept. 14, 2011, D.C. Law 19-21, § 9013, 58 DCR 6226.)

Section references. — This section is referred to in § 41-131.

Prior Codifications. — 1981 Ed., § 42-223.

Effect of amendments. — D.C. Law 19-21, in subsec. (b)(1), inserted “Any monies unexpended at the end of a fiscal year shall revert to the unrestricted fund balance of the General Fund of the District of Columbia.”

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively.

Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

References in text. — The “effective date of this chapter,” referred to near the beginning of the first sentence of subsection (a), is the effective date of D.C. Law 3-160, March 5, 1981.

Editor’s notes. — Pursuant to the Office of the Chief Financial Officer’s “Notice of Public Interest” published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner’s Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

Uniform Law: This section is based upon § 23 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-124. Filing of claim with Mayor for abandoned property.

Any person, excluding a state, claiming an interest in any property paid or delivered to the Mayor under this chapter may file a claim to the property or to the net proceeds from its sale. The claim must be on a form prescribed by the Mayor and must be verified by the claimant.

(Mar. 5, 1981, D.C. Law 3-160, § 124, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-224.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor’s notes. — Uniform Law: This section is based upon § 24(a) of the Uniform Unclaimed Property Act (1981 Act).

§ 41-125. Determination of claims by Mayor.

(a) The Mayor shall within 30 days of the receipt of any claim either pay the claim or give written notice to the claimant of a denial in whole or in part. Upon a denial or a failure by the Mayor to respond within 30 days, the claimant may request a hearing on the claim. Upon such request the Mayor shall hold a hearing and receive evidence in accordance with § 2-509.

(b) If the claim is determined in favor of the claimant, the Mayor shall make payment of only that amount which the Mayor actually received plus any

dividends or interest allowed under § 41-121. The claim shall be paid without deduction for costs of notices or sale or for service charges.

(Mar. 5, 1981, D.C. Law 3-160, § 125, 27 DCR 5150.)

Section references. — This section is referred to in § 41-127.

Prior Codifications. — 1981 Ed., § 42-225.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 20 of the Uniform Disposition of Unclaimed Property Act (1966 Act).

This section is also based upon § 24(b) and (c) of the Uniform Unclaimed Property Act (1981 Act).

§ 41-126. Claim of state to recover property.

(a) At any time after property has been paid or delivered to the Mayor under this chapter, a state is entitled to recover the property if:

(1) The property was presumed abandoned in the District because the apparent owner was unknown when the property was presumed abandoned under this chapter, the last known address of the apparent owner was in fact in that state, and, under the laws of that state, the property escheated to or was subject to a claim of abandonment by that state;

(2) The last known address of the apparent owner of the property appearing on the records of the holder is in that state and, under the laws of that state, the property has escheated to or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in that state, and, under the laws of that state, the property has escheated to or become subject to a claim of abandonment by that state;

(4) The property was presumed abandoned to the District government under § 41-104(5) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) The property is the sum payable on a traveler's check, money order, or other similar instrument that was presumed abandoned to the District under § 41-105, the traveler's check, money order, or other similar instrument was in fact purchased in that state, and, under the laws of that state, the property has escheated to or become subject to a claim of abandonment by that state.

(b) The claim of a state to recover escheated or abandoned property under this section must be presented in a form prescribed by the Mayor, who shall consider the claim within 30 days after it is presented. The Mayor shall allow the claim if the Mayor determines that the claiming state is entitled to the abandoned property.

(c) In connection with all property so delivered to a state, the Mayor shall seek indemnification from the state making the claim.

(Mar. 5, 1981, D.C. Law 3-160, § 126, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-226.

Legislative history of Law 3-160. — For

legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 25 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-127. Judicial review of Mayor's decision.

Any person aggrieved by a decision of the Mayor, or as to whose claim the Mayor has failed to hold a hearing within a reasonable time pursuant to § 41-125(a), may have such claim reviewed pursuant to § 2-510.

(Mar. 5, 1981, D.C. Law 3-160, § 127, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-227.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 26 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-128. Election to take payment or delivery.

(a) The Mayor, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which the Mayor considers to have a value less than the cost of giving notice and holding sale, if the Mayor considers it desirable because of the small sum involved. The Mayor may postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within 120 days after filing the report required under § 41-117, the Mayor shall be deemed to have elected to receive the custody of the property; provided, that with respect to reports filed no later than June 20, 1981, pursuant to § 41-117(d), the Mayor shall have no more than 30 days after the filing of the reports to decline to receive any reported property.

(b) If a holder elects to report and deliver property otherwise subject to this chapter prior to the time that the property is presumed abandoned, the Mayor, if the Mayor deems it in the best interest of the owner, may consent in writing to accept the report and delivery of the property upon the conditions and terms as the Mayor shall prescribe. The property delivered under this subsection shall be held by the Mayor and shall not be presumed abandoned until such time as the property would otherwise be presumed abandoned under this chapter.

(c) Any property delivered to the Mayor pursuant to this chapter which has no apparent commercial value shall be retained by the Mayor until such time as the Mayor determines to destroy or otherwise dispose of it.

(Mar. 5, 1981, D.C. Law 3-160, § 128, 27 DCR 5150; June 11, 1981, D.C. Law 4-10, § 2(d), 28 DCR 1989; Sept. 29, 1992, D.C. Law 9-161, § 2(q), 39 DCR 5696.)

Prior Codifications. — 1981 Ed., § 42-228.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 4-10. — For

legislative history of D.C. Law 4-10, see Historical and Statutory Notes following § 41-117.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Editor's notes. — Uniform Law: This section is based upon § 22 of the Uniform Disposition of Unclaimed Property Act (1966 Act).

This section is also based upon § 27 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-129. Periods of limitation.

(a) The expiration of any period of time specified by contract, statute, or court order, during which a claim for recovery of money or property can be made, or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, does not prevent the money or property from being presumed abandoned property, or affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the Mayor.

(b) No action or proceeding may be commenced by the Mayor to enforce any provision of this chapter in regard to the reporting, delivery, or payment of property more than 10 years after the holder specifically identified the property in a report filed with the Mayor or gave express notice to the Mayor of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

(Mar. 5, 1981, D.C. Law 3-160, § 129, 27 DCR 5150; May 15, 1991, D.C. Law 9-2, § 2, 38 DCR 1960; Aug. 17, 1991, D.C. Law 9-35, § 2, 38 DCR 4609; Mar. 20, 1998, D.C. Law 12-60, § 1701(p), 44 DCR 7378.)

Prior Codifications. — 1981 Ed., § 42-229.

Temporary Amendment of Section. — Section 1701(p) of D.C. Law 12-59 rewrote (b).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(p) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(p) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-2. — Law 9-2, the "Uniform Disposition of Unclaimed Property Act of 1980 Temporary Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-98. The Bill was adopted on first and second readings on February 5, 1991, and

March 5, 1991, respectively. Signed by the Mayor on March 15, 1991, it was assigned Act No. 9-7 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-35. — Law 9-35, the "Uniform Disposition of Unclaimed Property Act of 1980 Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-114, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and June 18, 1991, respectively. Signed by the Mayor on July 12, 1991, it was assigned Act No. 9-62 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based upon § 29 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-130. Verified reports; examination of records; subpoenas.

(a) The Mayor may require that any person shall file a verified report

stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter.

(b) The Mayor may at reasonable times and upon reasonable notice examine the records of any person to determine if such person has complied with the provisions of this chapter. It shall be no defense to such a request for examination that the person believes it is not in possession of any property reportable or deliverable under this chapter.

(c) If a person under § 41-111 is treated as the holder of the property only insofar as the interest of the business association in such property is concerned, the Mayor may pursuant to subsection (b) of this section examine the records of the person; provided, that the Mayor shall give the notice required by subsection (b) of this section to both the person and the business association not less than 90 days prior to the examination.

(c-1) If in connection with an examination of the records of a holder property which should have been reported pursuant to this chapter is discovered, the holder may be assessed a fee for the actual costs of the examination in addition to any interest charge or penalty that may be due under § 41-135.

(d) If a holder shall fail to maintain the records required by § 41-132 and the available records of the holder for the periods subject to the chapter are not sufficient to permit the preparation of a report and delivery of abandoned property, the holder shall be ordered to report and deliver such property as may reasonably be estimated based upon any other records of the holder which exist.

(e) If any holder refuses to permit the holder's records to be examined, the Mayor may issue a subpoena to compel the holder to testify and produce the records pursuant to § 1-301.21.

(Mar. 5, 1981, D.C. Law 3-160, § 130, 27 DCR 5150; June 4, 1982, D.C. Law 4-111, § 3(b), 29 DCR 1684; Sept. 29, 1992, D.C. Law 9-161, § 2(r), 39 DCR 5696.)

Section references. — This section is referred to in § 41-136.

Prior Codifications. — 1981 Ed., § 42-230.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 4-111. — For legislative history of D.C. Law 4-111, see Historical and Statutory Notes following § 41-104.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Editor's notes. — Uniform Law: This section is based upon § 30 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-131. Confidentiality.

Any information or records required to be furnished to the Mayor as provided in this chapter shall be confidential and shall not be disclosed to any person except the person who furnished the same to the Mayor and except as provided in §§ 41-118 and 41-123 or as may be necessary in the proper administration of this chapter alone.

(Mar. 5, 1981, D.C. Law 3-160, § 131, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-231.
Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is similar to § 20(d) of the Uniform Unclaimed Property Act (1995 Act).

§ 41-132. Retention of records.

(a) Except as provided in subsection (b) of this section and unless the Mayor provides otherwise by rule, every holder required to file a report under § 41-117 shall, as to any property for which it has obtained the address of the owner, maintain a record of the name and address of the owner for 10 years after the date the property may have become reportable.

(b) Any business association that sells in the District traveler's checks, money orders, or other similar written instruments, other than 3rd party bank checks on which the business association is directly liable or that provides those traveler's checks, money orders, or similar written instruments to others for sale in the District, shall maintain a record of such instruments while they remain outstanding indicating the state and date of issue for 3 years after the date the property may have become reportable. The record may be destroyed after the record has been retained for such reasonable time as the Mayor by rule shall designate.

(Mar. 5, 1981, D.C. Law 3-160, § 132, 27 DCR 5150.)

Section references. — This section is referred to in § 41-130.

Prior Codifications. — 1981 Ed., § 42-232.
Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 31 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-133. Action to compel delivery of abandoned property.

If any person refuses to pay or deliver abandoned property to the Mayor as required under this chapter, the Mayor may bring an action in the Superior Court of the District of Columbia to compel such delivery.

(Mar. 5, 1981, D.C. Law 3-160, § 133, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-233.
Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 24 of the Uniform Disposition of Unclaimed Property Act (1966 Act).

§ 41-134. Reciprocal actions and agreements.

(a) At the request of a state, the Corporation Counsel may bring an action in the name of the administrator of the requesting state, in any court of appropriate jurisdiction to enforce the unclaimed property laws of the requesting state against a holder in the District of property subject to escheat or a claim of abandonment by that state, if that state has agreed to pay expenses incurred by the Corporation Counsel in bringing the action.

(b) The Mayor may request that the attorney general of a state or any other person bring an action in the name of the Mayor in that state. The District government shall pay all expenses including attorney's fees in any action under this subsection. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner in accordance with this chapter.

(c)(1) The Mayor may enter into an agreement to provide and to receive information needed to enable the District government and a state to audit or otherwise determine unclaimed property that the District or the state may be entitled to escheat or subject to a claim of custody as abandoned property.

(2) The Mayor may by rule require the reporting of information needed to enable the Mayor to comply with agreements made pursuant to this section and prescribe the form, including verification of the information to be reported, and the times for filing the reports.

(d) The Mayor may join with states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(Mar. 5, 1981, D.C. Law 3-160, § 134, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-234.

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 33 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-135. Interest and penalties.

(a) Any person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay interest at the rate of 1 ½% per month or fraction of a month on the property or value of the property from the date the property should have been paid or delivered.

(b) Except as otherwise provided in subsection (c) of this section, a holder who fails to report, pay, or deliver property within the time prescribed under this chapter, or fails to perform other duties imposed by this chapter, shall pay to the Mayor, in addition to the interest as provided in subsection (a) of this section, a civil penalty of \$200 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of \$10,000.

(c) A holder who willfully fails to report, pay, or deliver property within the time prescribed under this chapter, or fails to perform other duties imposed by this chapter, shall pay to the Mayor, in addition to the interest as provided in subsection (a) of this section, a civil penalty of \$1,000 for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of \$25,000, plus 25% of the value of any property that should have been paid or delivered.

(d) The interest or penalty or any part of the interest or penalty as imposed in subsection (b) or (c) of this section may be waived by the Mayor if the person's failure to pay or deliver property is satisfactorily explained to the Mayor and if the failure has resulted from a mistake by the person in understanding or applying the law or the facts which require that person to pay or deliver property as provided in this chapter.

(e) For purposes of this section, the term "person" also includes an officer or employee of a corporation, or member or employee of a partnership or association, who as an officer, employee, or member is responsible to report, pay, or deliver abandoned property to the Mayor as required under this chapter.

(f) A holder who fails to exercise due diligence as provided in § 41-117 will be assessed a \$10 penalty per item.

(Mar. 5, 1981, D.C. Law 3-160, § 135, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(s), 39 DCR 5696; Mar. 20, 1998, D.C. Law 12-60, § 1701(q), 44 DCR 7378.)

Section references. — This section is referred to in §§ 41-130 and 41-136.

Prior Codifications. — 1981 Ed., § 42-235.

Temporary Amendment of Section. — Section 1701(q) of D.C. Law 12-59 rewrote (b), (c), and (d); and added (f).

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 1701(q) of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 1701(q) of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Legislative history of Law 9-161. — For legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.

Legislative history of Law 12-59. — For legislative history of D.C. Law 12-59, see Historical and Statutory Notes following § 41-102.

Legislative history of Law 12-60. — For legislative history of D.C. Law 12-60, see Historical and Statutory Notes following § 41-102.

Editor's notes. — Uniform Law: This section is based upon § 34 of the Uniform Unclaimed Property Act (1981 Act).

CASE NOTES

In general.

Imposition of penalties following finding that Unclaimed Property Act has been violated is mandatory. D.C. Code 1981, § 42-235(a). *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

For purposes of civil penalty provision of Unclaimed Property Act, failure to report property as required constitutes single violation. D.C. Code 1981, § 42-235. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

§ 41-136. Enforcement.

(a) All fines levied pursuant to § 41-135(a) are civil in nature.

(b) The Mayor may issue a notice of violation to any person who violates a provision of this chapter. The notice shall:

- (1) State the nature of the violation; and
- (2) Describe the procedures provided in this section.

(c) A notice of violation shall be the summons and complaint for purposes of this section. A duplicate of the notice of violation shall be served personally on the person to whom it is issued as provided in subsection (d) of this section. The original or a facsimile thereof shall be filed with the Corporation Counsel and shall be deemed a record kept in the ordinary course of business and shall be prima facie evidence of the facts contained therein.

(d) A notice of violation shall be served personally upon the alleged violator.

If the alleged violator is not present the notice of violation shall be served by affixing such notice to the place of business in a conspicuous place.

(e) The Mayor shall prescribe the form for the notice of violation. A Mayor's rule or order establishing the amount of collateral shall be submitted by the Mayor to the Council of the District of Columbia for a 30 calendar day review period, excluding days of Council of the District of Columbia recess. No such rules or regulations shall take effect until the end of the 30 calendar day period beginning on the day such rules or regulations are transmitted by the Mayor to the Chairman of the Council of the District of Columbia, and then, only if during such period, the Council of the District of Columbia does not adopt a resolution disapproving such rules and regulations in whole or in part.

(f) A person shall answer a notice of violation within 20 days by:

(1) Depositing and forfeiting collateral in an amount established by rule or order of the Mayor; or

(2) Depositing collateral in an amount established by rule or order of the Mayor and requesting the Superior Court of the District of Columbia to set a trial date.

(g) Unless otherwise provided, the conduct of any civil trial commenced pursuant to subsections (b), (c), (d), (e) and (f) of this section shall be governed by the Superior Court of the District of Columbia Rules of Civil Procedure.

(h) In such trial, the complaint of a violation of this chapter shall be brought in the name of the District of Columbia by the Corporation Counsel. The burden of proof shall be upon the District of Columbia and no violation of this chapter may be established except upon proof by a preponderance of the evidence.

(i) All fines, collateral, and fees collected under this section shall be paid into the General Fund of the District government.

(j) A fine or collateral is due and payable pursuant to § 41-135(a) upon default or a finding at trial in favor of the District government or upon the failure of a person to answer a notice of violation within 15 days as provided in subsection (f) of this section.

(k) Failure of a person to pay a fine or collateral when due shall cause such fine or collateral to be due and payable in twice the original amount, not to exceed \$20,000.

(l)(1) The District of Columbia shall have a lien upon any amount due and payable as a fine or collateral pursuant to subsections (a), (b), and (c) of § 41-135 and any amount due as the cost of conducting an examination pursuant to § 41-130(c).

(2) Such lien shall not be effective unless: (A) the District government has filed in the Office of the Recorder of Deeds of the District of Columbia, in a docket provided for such liens, a written statement containing the name and address of the violator and the date and approximate place of the violation; and (B) the District government has given notice of the filing of such lien to the violator. Thereafter, the District government is authorized to file suit in the amount of its lien.

(Mar. 5, 1981, D.C. Law 3-160, § 136, 27 DCR 5150; Sept. 29, 1992, D.C. Law 9-161, § 2(t), 39 DCR 5696.)

Prior Codifications. — 1981 Ed., § 42-236.
Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.
Legislative history of Law 9-161. — For

legislative history of D.C. Law 9-161, see Historical and Statutory Notes following § 41-103.
Editor's notes. — Uniform Law: This section is based in part upon § 32 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-137. Agreement to locate property.

(a) No agreement or contract with a person for a fee or compensation to locate, deliver, recover, or assist in the recovery of property reported under § 41-117, entered into within 7 months after the date payment or delivery is required under § 41-119, is valid.

(b) No agreement entered into after 7 months from the date of delivery of the property by the holder to the Mayor is valid if a person thereby undertakes to locate property included in a report for a fee or other compensation exceeding 10 percent of the value of the recoverable property unless the agreement is in writing and signed by the owner and discloses the nature and value of the property and the name and address of the holder of the property as such facts have been reported. Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

(Mar. 5, 1981, D.C. Law 3-160, § 137, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-237.
Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 35 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-138. Rules and regulations.

The Mayor is authorized to issue such rules, regulations, and orders as may be necessary in order to effectuate the purposes of this chapter.

(Mar. 5, 1981, D.C. Law 3-160, § 138, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-238.
Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 38 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-139. Appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this chapter.

(Mar. 5, 1981, D.C. Law 3-160, § 139, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-239.
Legislative history of Law 3-160. — For

legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

§ 41-140. Severability.

If any provision of this chapter or the application thereof to any person or

circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(Mar. 5, 1981, D.C. Law 3-160, § 140, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-240.
Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 39 of the Uniform Unclaimed Property Act (1981 Act).

§ 41-141. Uniformity of application and construction.

This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states enacting it.

(Mar. 5, 1981, D.C. Law 3-160, § 141, 27 DCR 5150.)

Prior Codifications. — 1981 Ed., § 42-241.
Legislative history of Law 3-160. — For legislative history of D.C. Law 3-160, see Historical and Statutory Notes following § 41-101.

Editor's notes. — Uniform Law: This section is based upon § 40 of the Uniform Unclaimed Property Act (1981 Act).

CASE NOTES

Purpose.

Although primary purpose of Unclaimed Property Act is to put an end to unearned and fortuitous enrichment of holders of abandoned property and to provide instead for interest of citizens of District and insure that any such escheat would be for public benefit rather than for private gain, Act was also designed to pro-

tect interests in rights of true owners of abandoned property and to relieve holders of such property, such as banks, of annoyance and liability incident to caring for it. D.C. Code 1981, §§ 42-201 to 42-242. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

§ 41-141.01. Unclaimed deposits for excavation work in public space.

This chapter shall not apply to an unclaimed deposit for excavation work in public space. The Mayor may establish, by rule, the standards and procedures for determining whether and when such a deposit will be considered abandoned, and for determining the custody and ownership of such a deposit.

(Mar. 5, 1981, D.C. Law 3-160, § 141a, as added Sept. 24, 2010, D.C. Law 18-223, § 6022, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition of section, see § 6022 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 6021 of

D.C. Law 18-223 provided that subtitle C of title VI of the act may be cited as the “Un- claimed Deposits for Excavation Work Amend- ment Act of 2010”.

§ 41-142. Retroactivity of chapter.

This chapter shall apply retroactively to all items of property which would have been presumed abandoned if this chapter had been in effect as of January 1, 1980.

(Mar. 5, 1981, D.C. Law 3-160, § 301(b), 27 DCR 5150.)

Section references. — This section is re- **Legislative history of Law 3-160.** — For ferred to in § 42-129. legislative history of D.C. Law 3-160, see His- torical and Statutory Notes following § 41-101.

Prior Codifications. — 1981 Ed., § 42-242.

CASE NOTES

ANALYSIS

Due process.
In general.

Due process.

Application of Unclaimed Property Act to property as to which limitations period had expired prior to Act's enactment was not deprivation of property without due process of law in violation of Fifth Amendment; holder of property could not show special hardships or oppressive effects. D.C. Code 1981, § 42-201; U.S. Const.Amend. 5. Riggs Nat'l Bank v. District of

Columbia, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

In general.

Under Unclaimed Property Act, all funds identifiable as of January 1, 1980 as having been unclaimed for requisite period were subject to reporting and delivery to District, whether or not bank had transferred them to income; thus, obligations on official checks and those dormant accounts bank had closed and converted into income prior to that date were subject to Act. D.C. Code 1981, § 42-242. Riggs Nat'l Bank v. District of Columbia, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

CHAPTER 2. RECORDATION OF INSTRUMENTS.

Sec.	Sec.
41-201. Filing and indexing of financial statements; legal effect.	41-203. Destruction of released instruments.
41-202. Disposal of void or lapsed instruments; termination statement; exceptions.	41-204. False statements; failure to render termination statement; "Corporation Counsel" defined.

§ 41-201. Filing and indexing of financial statements; legal effect.

It is not necessary for the Recorder of Deeds to spread upon the records of his office the financing statements or other papers filed pursuant to part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Official Code, but they shall be indexed and, except as hereinafter provided, shall be kept on file and shall be open to inspection by the public, and shall have the same force and legal effect as if they were actually recorded in the books of his office.

(Mar. 3, 1901, ch. 854, § 546-C; Mar. 3, 1925, 43 Stat. 1103, ch. 417; June 5, 1952, 66 Stat. 126, ch. 370, § 2; Dec. 30, 1963, 77 Stat. 772, Pub. L. 88-243, § 10.)

Prior Codifications. — 1981 Ed., § 42-101. 1973 Ed., § 42-102.

§ 41-202. Disposal of void or lapsed instruments; termination statement; exceptions.

(a) Unless the Recorder of Deeds has notice of an action pending relative thereto, he may remove from the files and destroy:

(1) An instrument filed in his office pursuant to Chapter 12 of Title 50, which has become void or lapsed, and which has been void or lapsed for 1 year or more, together with any affidavit, release, assignment, or continuation or termination statement relating thereto;

(2) A lapsed financing statement, a lapsed continuation statement, a statement of assignment or release relating to either, filed pursuant to part 4 of Article 9 of Subtitle I of Title 28, and any index of any of them, 1 year or more after lapse of the financing statement and every continuation statement related thereto; and

(3) A termination statement filed pursuant to § 28:9-404, and the index on which it is noted, 1 year or more after the filing of the termination statement.

(b) Subsection (a) of this section does not apply to a bill of sale, mortgage, deed of trust, conditional sale of, financing statement or security agreement covering, railroad rolling stock.

(Mar. 3, 1901, ch. 854, § 546-D; June 5, 1952, 66 Stat. 126, ch. 370, § 3; June 18, 1953, 67 Stat. 64, ch. 126, § 1; Dec. 30, 1963, 77 Stat. 772, Pub. L. 88-243, § 11.)

Cross references. — Fees, see § 42-1210. 1973 Ed., § 42-104.
Prior Codifications. — 1981 Ed., § 42-102.

§ 41-203. Destruction of released instruments.

When a financing statement filed pursuant to part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Official Code has not lapsed, but all the collateral described in the financing statement has been released in the manner provided by part 4 thereof, the Recorder of Deeds may, after the expiration of 3 years from the date of the filing of the statement releasing all the collateral, destroy the financing statement and each continuation statement, statement of assignment, and statement of release relating thereto.

(Mar. 3, 1901, ch. 854, § 546-F; June 5, 1952, 66 Stat. 126, ch. 370, § 3; Dec. 30, 1963, 77 Stat. 773, Pub. L. 88-243, § 12.)

Prior Codifications. — 1981 Ed., § 42-103. 1973 Ed., § 42-106.

§ 41-204. False statements; failure to render termination statement; “Corporation Counsel” defined.

(a) Whoever intentionally makes a false statement with respect to a financing statement or other paper filed with the Recorder of Deeds pursuant to part 4 of Article 9 of Subtitle I of Title 28 of the District of Columbia Official Code, or, after receipt of payment in full of the debt secured thereby, neglects or refuses, after written demand by the debtor, to send to the debtor a termination statement as provided by § 28:9-404 of the Code, shall be fined not more than \$500 or imprisoned not more than 1 year, or both.

(b) Prosecutions for violations of this section shall be by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

(c) As used in subsection (b) of this section “Corporation Counsel” means the attorney for the District of Columbia, by whatever title the attorney may be designated by the Mayor of the District of Columbia.

(Mar. 3, 1901, ch. 854, § 546-G; June 5, 1952, 66 Stat. 126, ch. 370, § 3; Dec. 30, 1963, 77 Stat. 773, Pub. L. 88-243, § 13.)

Prior Codifications. — 1981 Ed., § 42-104.
 1973 Ed., § 42-107.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.



